

MAHAN'S SUPPLEMENT

TO

BALLINGER'S CODES AND STATUTES

OF

WASHINGTON

CONTAINING

G. W. Korte

THE GENERAL STATUTES AND AMENDMENTS TO THE CODES ENACTED
AT THE LEGISLATIVE SESSIONS OF 1899, 1901 AND 1903,
WITH NOTES OF DECISIONS OF THE SUPREME COURT
FROM VOLUME 16 TO VOLUME 30, INCLUSIVE,
WASHINGTON REPORTS.

COMPILED BY
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NOTE.

This, the First Supplement to Ballinger's Codes and Statutes of Washington, contains the decisions of the Supreme Court of Washington from and including Volume 16 to Volume 30, Washington Reports, and the Statutes of the State Legislature passed at its sessions in 1899, 1901 and 1903. The same general plan of arrangement has been pursued as was adopted in the main work. The notes of decisions are in the main copies of the syllabi of the reporter, pursuant to contract with the publishers.

How. Korte

SUPPLEMENT

TO THE

CODES AND STATUTES OF WASHINGTON

WITH

NOTES OF DECISIONS.

1899-1901-1903.

Adoption of Ballinger's Code as an Official Compilation of Existing Statutes.

That the compilation arranged by R. A. Ballinger and known as Ballinger's Annotated Codes and Statutes of Washington, two volumes, is hereby adopted as an official compilation of existing statutes of the state, up to and including the year 1897, but of no greater authority than all other existing official compilations or session laws of the state.

It shall be proper for the legislature in amending or repealing existing statutes, and for the courts in referring to existing statutes, to refer to or cite Ballinger's Annotated Codes and Statutes of Washington containing such law.

Before the foregoing sections of this act are operative, Bancroft-Whitney Company, a corporation publisher of the compilation known as Ballinger's Annotated Codes and Statutes of Washington, two volumes, must enter into a contract with the secretary of state, agreeing to sell to the state of Washington, for the use of its state and county officers, copies of said compilation in lots of not less than twenty-five sets at a time, at the rate of ten dollars per set. Said codes so purchased as provided in this section by the secretary of

state are only for said state and county officers, and for their exclusive use. The secretary of state shall under no consideration supply private individuals with said code. [Approved Mar. 13, 1899; L. 1899, p. 109.]

§ 35. Boundaries of Counties—Ferry County, Organization of.

All that portion of the state of Washington described as follows, to wit: Commencing at the point where the boundary line between Stevens and Okanogan counties intersect the Columbia river, thence up the mid-channel of the Columbia river to the mouth of Kettle river, thence up the mid-channel of Kettle river to the boundary line between the United States and British Columbia, thence westerly along the said boundary line to the intersection thereof with the said boundary line between Stevens and Okanogan counties, thence southerly along the said boundary line to the place of beginning, shall be and hereby is created and organized as the county of Ferry, and so named in honor of the Honorable Elisha P. Ferry, the first governor of the state.

Assumption of Indebtedness.

The county of Ferry shall assume and pay to the county of Stevens its just proportion of the debts and liabilities of the said county, in the proportion that the assessed valuation of the said county of Ferry bears to the assessed valuation of the whole of Stevens county. The adjustment of said indebtedness to be based upon the assessment for the year 1898: Provided, That in accounting between the said counties, neither county shall be charged with any debt or liability incurred in the purchase of any county property, or the purchase of any county building in use or under construction, which shall fall within and be retained by the other county. Immediately upon the appointment and qualification of the auditor of Ferry county, the auditor of said Ferry county and the auditor of Stevens county shall apportion the indebtedness that Ferry county will under this section assume, and the county commissioners of said Ferry county shall order warrant or warrants drawn to the amount of the indebtedness assumed by the said county of Ferry in favor of said Stevens county, and if said apportionment cannot be made amicably between the said auditors then the same shall be adjusted by the superior court of Stevens county in an action brought before said court for that purpose.

Location of County Seat.

The county seat of said county of Ferry shall be located in the town of Republic, and so remain until removed as provided by law.

Designation of Class.

Until otherwise classified the said county of Ferry is hereby designated as belonging to the twenty-seventh class.

Appointment of Commissioners.

Within ten days after this act shall take effect, the governor shall appoint three county commissioners for said county, who shall be bona fide residents and qualified electors of said county, who shall appoint such county, precinct and road district officers as provided for by the constitution and laws of this state, all of which officers shall hold their respective offices until their successors are duly elected and qualified, each of said officers, before entering upon the duties of his respective office, shall take and subscribe the oath and execute the official bond required by law.

Election of Superior Court Judge.

Until otherwise directed by the legislature, one superior judge only shall be elected for the counties of Lincoln, Adams, Douglas, Okanogan and Ferry: Provided, That until the next general election the said county of Ferry shall be and is hereby attached to the district composed of Lincoln, Adams, Douglas and Okanogan counties for judicial purposes.

Commissioner District.

The board of county commissioners, at their regular meeting in July, 1899, by an order duly entered in the minutes of their proceedings, shall divide their county into three commissioner districts, in the manner provided by law, and designate the boundaries thereof, and at the next general election in said county, there shall be elected three commissioners, one from each of said districts; the commissioner for District No. 1 to be elected for four years, and the commissioners for Districts Nos. 2 and 3 for two years.

Legislative Representation.

For the purpose of representation in the legislature, until otherwise provided by law, the county of Ferry shall be included in the second senatorial district, and shall constitute the fiftieth representative district.

Until the county of Ferry is organized by the appointment and qualification of its officers, the jurisdiction of the present officers of Stevens county shall remain in full force and effect in the territory constituting said county of Ferry.

Transcription of Records.

Within sixty days after the passage and approval of this act, the county auditor of Stevens county shall transcribe from the records of said county, all records and all papers and documents on file, in any wise affecting the title to any estate or property, real or personal, situate within the county of Ferry; and the county commissioners of Ferry county shall provide, at the expense of the county, proper and suitable record books, to which such records shall be so transcribed by the auditor of Stevens county in legible writing and said record books and papers shall be delivered to the auditor of Ferry county and said records and documents so transcribed shall be accepted and received as evidence in all courts and places as if the same had been originally recorded or filed in the office of the auditor of Ferry county.

Pending Actions and Proceeding.

All actions and proceedings now pending in the superior court of Stevens county affecting the title or possession of real estate in Ferry county, or in which all the parties are residents of Ferry county, shall be transferred to the superior court of Ferry county, and all further proceedings had therein shall be had in Ferry county, the same as if originally commenced in said county; all other actions or proceedings, civil or criminal, now pending in the superior court of Stevens county, shall be prosecuted to termination thereof in the superior court of Stevens county.

All pleadings, process, documents and files in the office of the county clerk of Stevens county affecting pending suits and proceedings transferred as provided in section 11 of this act shall be transferred and all records therein transcribed, by the county clerk of Stevens county to the county clerk of Ferry county, within thirty days after said clerk shall have entered upon the duties of his office.

Transcribed Records as Evidence.

All records, papers and documents on record or on file in the office of the county clerk of Stevens county, in any wise affecting the title or possession of real estate in Ferry county, shall be transcribed and transferred to the county clerk of Ferry county by the county clerk of Stevens county, and said records and documents, when so transcribed and transferred, shall be received as evidence in all courts and places, as if originally recorded or filed, as the case may be, in the county of Ferry.

Certification of.

All records so transcribed shall be certified by the officer transcribing the same under the seal of his office in manner following, to wit: Each book of transcribed records shall be certified to be a correct transcript of the records of Stevens county contained therein, describing in the certificate the office in Stevens county from which the same were transcribed, and each officer so transcribing shall finally certify to the completeness of all the records so transcribed by him.

The county of Ferry shall pay to the county of Stevens for transcribing of all records at the rate of eight cents for each one hundred words, including in the computation the certificate.

An emergency exists, and this act shall take effect immediately. [Approved Feb. 21, 1899; L. 1899, p. 26.]

Creation of new county — Necessary population.—Where a new county has been set off from another county, under article 11, section 3, of the constitution prohibiting the formation of new counties containing a less population than two thousand, the failure of the legislative records to recite the fact that such new county contains a population of not less than two thousand would not render the creation of such county illegal, since the legal presumption is that this fact must have been proved to the satisfaction

of the legislature and that the passage of the act itself is equivalent to a finding of the necessary facts: *Farquharson v. Yeargin*, 24 Wash. 549, 64 Pac. 717.

Appointment of provisional county officers.—Although article 11, section 5, of the constitution provides for a general and uniform law governing the elections of county officers, a provision in Laws 1899, page 26, section 5, authorizing the governor to appoint the county commissioners in the newly created county of Ferry, and that they should fill by appoint-

ment all other county offices, is not unconstitutional, since the power to fill county offices provisionally in new counties is a

necessary incident of the legislative power to create new counties: Id.

§ 35a. Boundaries of Counties—Chelan County.

All those portions of the counties of Kittitas and Okanogan described as follows, to wit: Beginning at the point of intersection of the middle of the main channel of the Columbia river with the fifth standard parallel north, thence running west along said fifth standard parallel north to the point where said fifth standard parallel north intersects the summit of the main divide between the waters flowing northerly and easterly into the Wenatchee and Columbia rivers, and the waters flowing southerly and westerly into the Yakima river, thence in a general northwesterly direction along the summit of said main divide between the waters flowing northerly and easterly into the Wenatchee and Columbia rivers and the waters flowing southerly and westerly into the Yakima river, following the course of the center of the summit of the water shed dividing the said respective waters, to the center of the summit of the Cascade mountains; at the eastern boundary line of King county; thence north along the east boundary of King, Snohomish and Skagit counties to the point upon the said east boundary of Skagit county, where said boundary is intersected by the water shed between the waters flowing northerly and easterly into the Methow river and the waters flowing southerly and westerly into Lake Chelan; thence in a general southeasterly direction along the summit of the main divide between the waters flowing northerly and easterly into the Methow river and the waters flowing westerly and southerly into Lake Chelan and its tributaries; following the course of the center of the summit of the water shed dividing said respective waters, to the point where the seventh standard parallel north intersects said center of the summit of said water shed; thence east along the said seventh standard parallel north to the point of intersection of the middle of the main channel of the Columbia river with said seventh standard parallel north; thence down the middle of the main channel of the Columbia river to the point of beginning, shall be and hereby is created and established as the county of Chelan: Provided, however, That said Chelan county is hereby created as aforesaid, subject to the requirements of the constitution of the state of Washington in respect to the establishment of new counties, and subject to an ascertainment of the fact of such compliance, as hereinafter provided, and that the creation of said Chelan county hereby shall not become operative to establish said county until such compliance shall have been so had and the fact of such compliance so ascertained.

Method of Organization.

At any time within three months after this act shall take effect, any qualified voter living in any portion of Kittitas or Okanogan county embraced with [in] the boundaries of Chelan county, as hereinbefore defined, may present to the governor of the state of Washington a petition addressed to said governor, stating, in substance, that the signers of such petition are a majority of the voters living in the portions of Kittitas and Okanogan coun-

ties embraced within the boundaries of Chelan county as defined within this act, and praying that in case it shall be found that the constitutional provisions relating to the creation of new counties have been complied with that the county of Chelan shall be deemed fully established: Provided, That said petition shall be accompanied by a good and sufficient bond to said superior judge to be approved by him in the sum of \$3,000 to cover costs of proceedings under this act in case the said county shall not be established.

The governor shall forthwith transmit said petition to the judge of the superior court of Okanogan county and the said judge shall, within thirty days thereafter, examine said petition and ascertain whether said petition bears the signatures of persons living within the territory of Chelan county and entitled to vote therein, in number equal to a majority of the votes cast by voters living within said territory at the last preceding general election, as nearly as the number of such voters voting at such preceding election can be ascertained; if the judge finds the petition sufficiently signed then the said judge shall ascertain to his satisfaction upon evidence received in open court, that the striking therefrom of the territory proposed to be set over in Chelan county will not reduce the remaining population of said Kittitas or Okanogan counties or either of them respectively to a population of less than four thousand, and that such territory so proposed to be set over contains a population of two thousand or more: Provided, however, That the judge may in his discretion appoint an elector or electors who shall be a freeholder residing within the territory of Chelan county to take a special enumeration of the population of the counties of Okanogan and Kittitas or any part thereof which he may desire so that it will show separately the number of the population living in such portion thereof within the boundaries of Chelan county and living in the rest of said counties of Kittitas and Okanogan. It shall be the duty of the person or persons so appointed to qualify by filing with such court an oath that he will take such enumeration truly and impartially, and thereupon he or they shall take such enumeration and return the same verified by his affidavit to the effect that he believes the same to be a true and correct enumeration of such county, or as the case may be, of the portions of such county as to which the same relates, in such court, and to file the same in such court within one month after such enumeration has been completed.

If it shall be shown to the satisfaction of such judge of the superior court of Okanogan county that there are two thousand or more inhabitants within the boundaries herein set forth for the county of Chelan, and that there shall remain four thousand or more inhabitants in the remaining portion of Kittitas and Okanogan county, respectively, thereupon he shall make a decree setting forth the fact that the provisions of the constitution of the state of Washington have been complied with. Upon the filing of such decree it shall be the duty of the clerk of such court to make and transmit to the board of county commissioners of Kittitas and Okanogan counties, respectively, a certified copy thereof, and also a certified copy thereof to the governor of the state, and to the secretary of state.

Immediately upon receipt of said certified copy of the decree of the superior court of Okanogan county the governor shall make a proclamation declaring the county of Chelan fully established.

Assumption of Indebtedness.

The county of Chelan shall assume and pay to the counties of Kittitas and Okanogan, respectively, its proportion of the bonded and warrant indebtedness of each of said counties respectively, in the proportions that the assessed valuation of that part of Chelan county lying within the present boundaries of Kittitas and Okanogan counties respectively, bears to the assessed valuation of the whole of Kittitas and Okanogan counties respectively. The adjustment of said indebtedness shall be based upon the assessment for the year 1898: Provided, That in the accounting between the said counties neither county shall be charged with any debt or liability incurred in the purchase of any county property or the purchase of any county building which shall fall within and be retained by the other county.

County Seat.

The county seat of said Chelan county is hereby located at the town of Wenatchee, and shall there remain until the same shall be removed in accordance with the provisions of law.

Classification.

Until otherwise classified said county of Chelan is hereby designated as belonging to the twenty-sixth class.

First Board of Commissioners.

Dennis Strong, of Mission, Washington, Spencer Boyd, of Chelan, Washington, and G. W. Hoxsey, of Leavenworth, Washington, shall be the first board of county commissioners of said Chelan county, who shall meet at the county seat of said Chelan county within thirty days from the date of the governor's said proclamation as hereinbefore provided, and shall qualify as such county commissioners by filing their oath of office with the judge of the superior court, who shall approve their bond in the manner required by law: Provided, however, That if any of the above-named commissioners shall fail to qualify within the time specified then the governor shall appoint a bona fide resident and qualified elector of said Chelan county to fill the vacancy.

Precincts, Townships and Districts.

Such commissioners shall divide their county into precincts, townships and districts, as provided for by the laws then existing, making only such changes as are rendered necessary by the altered condition of the boundaries occasioned by the segregation from the original counties.

In all townships, precincts, school and road districts which retain their old boundaries the officers thereof shall retain their respective offices in and for such new county until their respective terms of office expire, or until their successors are elected and qualified, and shall give bonds to Chelan county of the same amount and in the same manner as had previously been given to the original county.

Appointment of County Officers.

Except as provided in the preceding section such commissioners shall be authorized and required to appoint all of the county officers of the county organized under the provisions of this act and of which they are commissioners, and the officers thus appointed shall commence to hold their office immediately upon their appointment and qualification according to law and shall hold their offices until the second Monday of January, 1901, or until their successors are elected and qualified.

Assignment for Judicial Purposes.

Until otherwise provided by law said Chelan county shall be and hereby is attached to the district composed of Okanogan, Douglas, Lincoln, Ferry and Adams counties, for judicial purposes.

Commissioner Districts.

The board of county commissioners at a regular meeting held within one year from the time when they shall qualify as commissioners of the county of Chelan, by an order duly entered in the minutes of their proceedings, shall divide Chelan county into three commissioners districts in the manner provided by law, and designate the boundaries thereof, and at the next general election in said county there shall be elected three commissioners, one from each of said districts; the commissioner for district number one to be elected for four years and the commissioner for district number two and three for two years.

Assignment for Legislative Representation.

For the purpose of representation in the legislature until otherwise provided by law, the county of Chelan shall be included in the first senatorial district and shall constitute the 51st representative district.

Continuation of Authority of Officers.

Until the county of Chelan is organized by the appointment and qualification of its officers, the jurisdiction of the present officers of Kittitas and Okanogan counties respectively, shall remain in full force and effect in those portions of the territory constituting the said county of Chelan lying within the boundaries of said Kittitas and Okanogan counties respectively.

Records for, to be Transcribed.

Within sixty days after the governor's proclamation, as hereinbefore provided, the county auditors of Kittitas and Okanogan counties, respectively, shall transcribe from the records of said counties respectively all records and all papers and documents on file in anywise affecting the title to any estate or property, real or personal, situated within the county of Chelan, and the county commissioners of Chelan county shall provide, at the expense of the county, proper and suitable record books to which such records shall be so transcribed by the auditors of Kittitas and Okanogan counties, in legible writing, and said record books and papers shall be delivered to the auditor of Chelan county, and said records and documents so transcribed shall be accepted

and received as evidence in all courts and places as if the same had been originally recorded or filed in the office of the auditor of Chelan county.

Pending Actions and Proceedings.

All actions and proceedings which shall be pending in the superior courts of Kittitas and Okanogan counties at the time of the governor's proclamation hereinbefore referred to, affecting the title or possession of real estate in Chelan county, or in which one or all the parties are residents of Chelan county, shall be transferred to the superior court of Chelan county, and all further proceedings had therein shall be in Chelan county, the same as if originally commenced in that county. All other actions or proceedings, civil or criminal, now pending in the superior courts of Kittitas and Okanogan counties shall be prosecuted to termination thereof in the superior courts of Kittitas and Okanogan counties respectively.

All pleadings, process, documents and files, in the office of the county clerks of Kittitas and Okanogan counties affecting pending suits and proceedings to be transferred as provided in the preceding section of this act, shall be transferred and all records therein transcribed by the county clerks of Kittitas and Okanogan counties, respectively, and transmitted to the county clerk of Chelan county, after said clerk shall have entered upon the duties of said office.

Transcribed Records as Evidence.

All records, papers and documents of record or on file in the offices of the county clerks of Kittitas and Okanogan counties, respectively, in anywise affecting the title or possession of real estate in Chelan county, shall be transcribed and transferred to the county clerk of Chelan county by the county clerks of Kittitas and Okanogan counties, respectively, and said records and documents when so transcribed and transferred shall be received as evidence in all courts and places as if originally recorded or filed, as the case may be, in the county of Chelan.

All records so transcribed shall be certified by the officer transcribing the same under the seal of his office in the manner following, to wit: Each book of transcribed records shall be certified to be a correct transcript of the records of Kittitas or Okanogan county, as the case may be, contained therein, describing in the certificate the office in Kittitas or Okanogan county from which the same were transcribed, and each officer so transcribing shall finally certify to the completeness of all records so transcribed by him.

Fees for Transcribing Records.

The county of Chelan shall pay to the counties of Kittitas and Okanogan, respectively, for the transcribing of all records, at the rate of ten cents for each one hundred words, including in the computation the certificate thereto. [Approved Mar. 13, 1899; L. 1899, p. 148.]

See Law 1905, p. 55
§ 44. Change of County Boundaries.

That when four-fifths (4-5) of the qualified electors living upon any territory not less than one section in area shall desire to have such territory

stricken from the county of which it shall then be a part and added to and made a part of the county contiguous thereto, they may present a petition describing with proper certainty the bounds and area of such territory, with the reasons for making such application, to the board of county commissioners of the county in which such territory shall be, who shall proceed to ascertain if such petition contains the requisite number of petitioners, who shall be bona fide residents of the territory sought to be stricken off and transferred to the contiguous county, and if satisfied that the petition is signed by four-fifths (4-5) of the bona fide residents of such territory and there will remain in the county from which such territory is taken more than four thousand inhabitants, the said board shall make an order that a special election shall be held within the limits of the territory described in the petition upon a date to be named in said order. Notices of election shall contain a description of the territory proposed to be transferred, the names of the counties from and to which such transfer is intended to be made, and shall be posted and published as required for general elections. [Amendment, approved Mar. 16, 1903; L. 1903, p. 228, § 1.]

§ 58. Senatorial Apportionment.

The state shall be divided into forty-two single senatorial districts, and said districts shall be constituted and numbered as follows:

First District.

The counties of Okanogan, Ferry and Douglas shall constitute the first senatorial district and be entitled to one senator.

Second District.

The county of Stevens shall constitute the second senatorial district and shall be entitled to one senator.

Third District.

The following portion of the city of Spokane, to wit, the precincts of Adams, Delaware, Eldorado and Eureka, together with the following precinct in the county of Spokane, to wit, Bell precinct, shall constitute the third senatorial district and be entitled to one senator.

Fourth District.

The following precincts in the county of Spokane, to wit, Bridge, Fairfield, Latah, Little Hangman, McCoy, Mica, Mt. Hope, Moran, Nosler, Peone, Pleasant Prairie, Richland, Rockford and Saltese, and all that portion of the city of Spokane, in said county, lying south of Riverside avenue and east of Division street, in said city, shall constitute the fourth senatorial district and be entitled to one senator.

Fifth District.

The following precincts of the county of Spokane, to wit, Abernethy, Beaver, Buckeye, Chattaroy, Cheney, Coulee, Deep Creek, Deer Park, Fancher, Five Mile, Graves, Indian Prairie, Marshall, Mayer, Medical Lake, Mount Carlton, Rock Creek, Rock Lake, Silver Lake, Spangle, Spurgeon, Spring

Valley, Stevens, Truitt, Waverly and Wells, shall constitute the fifth senatorial district and be entitled to one senator.

Sixth District.

The following portion of the city of Spokane, to wit, the precincts of Belmont, Blaine, Bernard, Beacon, Blake, Burton, Butler, Brown, Burke and Brickell, shall constitute the sixth senatorial district and be entitled to one senator.

Seventh District.

The following portion of the city of Spokane, to wit, the precincts of Cleveland, Cass, Carlisle, Cannon, Carleton, Clay, Damon and Douglas, shall constitute the seventh senatorial district and be entitled to one senator.

Eighth District.

The following precincts of the county of Whitman, to wit, Uniontown, Clinton, North Colfax, Onecho, Seats, Almota, Penawawa, Sutton, Endicott, South Colfax, Texas, Diamond, Pampa, Winona, Johnson, Colton, Pullman, Guy, Ewartsville, Harper, second ward of Colfax, Uniontown city, South Pullman city, Colton city, first ward of Colfax, Hooper, North Pullman city, third ward of Colfax, Bethel, Hay and Russell, shall constitute the eighth senatorial district and be entitled to one senator.

Ninth District.

The following precincts of the county of Whitman, to wit, Branham, Palouse, Farmington, Lone Pine, Rosalia, Steptoe, Pine city, Rock Creek, Elberton, Tekoa, Garfield, Oakesdale, St. John, Union, Thornton, Tekoa city, Rosalia city, Oakesdale city, Garfield city, Farmington city, East Palouse city, Sunset, Matlock, Cottonwood, West Palouse city, Turnbow and Elberton city, shall constitute the ninth senatorial district and be entitled to one senator.

Tenth District.

The counties of Asotin, Garfield and Columbia shall constitute the tenth senatorial district and be entitled to one senator.

Eleventh District.

The counties of Adams, Franklin, and the third and fourth wards of the city of Walla Walla, and the precincts of Wallula, Frenchtown, Lower, Touchet, Hadley, Eureka, Hill, Baker, Lower Dry Creek, Prescott, Mullen, Fremont, Steptoe, Whitman and Clyde, of Walla Walla county, shall constitute the eleventh senatorial district and be entitled to one senator.

Twelfth District.

The first and second wards of the city of Walla Walla, and the precincts of Waitsburg, Coppie, Russell Creek, Mill Creek, Washington, Small, Dixie, Clarke, Lewis, Sims, Stevens and Ritz, of Walla Walla county, shall constitute the twelfth senatorial district and be entitled to one senator.

Thirteenth District.

The counties of Kittitas and Chelan shall constitute the thirteenth senatorial district and be entitled to one senator.

Fourteenth District.

The county of Lincoln shall constitute the fourteenth senatorial district and be entitled to one senator.

Fifteenth District.

The county of Yakima shall constitute the fifteenth senatorial district and be entitled to one senator.

Sixteenth District.

The counties of Klickitat and Skamania shall constitute the sixteenth senatorial district and be entitled to one senator.

Seventeenth District.

The county of Clarke shall constitute the seventeenth senatorial district and be entitled to one senator.

Eighteenth District.

The county of Cowlitz shall constitute the eighteenth senatorial district and be entitled to one senator.

Nineteenth District.

The counties of Wahkiakum and Pacific shall constitute the nineteenth senatorial district and be entitled to one senator.

Twentieth District.

The county of Lewis shall constitute the twentieth senatorial district and be entitled to one senator.

Twenty-first District.

The county of Chehalis shall constitute the twenty-first senatorial district and be entitled to one senator.

Twenty-second District.

The county of Thurston shall constitute the twenty-second senatorial district and be entitled to one senator.

Twenty-third District.

The counties of Mason, Kitsap and Island shall constitute the twenty-third senatorial district and be entitled to one senator.

Twenty-fourth District.

The counties of Clallam, Jefferson and San Juan shall constitute the twenty-fourth senatorial district and be entitled to one senator.

Twenty-fifth District.

The following precincts of the county of Pierce, to wit, Alderton, Brekon, Buckley, Carbonado, Dieringer, Fairfax, Kipowsin, Lake Tapps, McMillan, Morse, Nisqually, Orting, the first, second and third wards of Puyallup, Reservation precinct, Rhodes Lake, South Orting, South Prairie, Sumner and Wilkeson, shall constitute the twenty-fifth senatorial district and be entitled to one senator.

Twenty-sixth District.

The following precincts of the county of Pierce, to wit, Anderson Island, Ortondale, Fox Island, Gig Harbor, Hillhurst, Junction, Lake Bay, Lake city, Lake View, Long Branch, Mountain View, McNeill's Island, Minter, Muck, Ohop, Purdy, Rosedale, Roy, Silver Lake, Smelter, Spanaway, Steilacoom, Tanwax, Vaughn, and the following precincts and wards in the city of Tacoma, in said county, all of the first ward, the first and seventh precincts of the second ward, and the first precinct of the seventh ward, and all of the eighth ward, shall constitute the twenty-sixth senatorial district and be entitled to one senator.

Twenty-seventh District.

The following precincts in the city of Tacoma, in Pierce county, to wit, the second, third, fifth and sixth precincts of the second ward, the second, ninth, tenth and twelfth precincts of the third ward, and the second precinct of the seventh ward, shall constitute the twenty-seventh senatorial district and be entitled to one senator.

Twenty-eighth District.

The following precincts and wards in the city of Tacoma, in Pierce county, to wit, the fourth precinct of the second ward, the first, third, fourth, fifth, sixth and eleventh precincts of the third ward, all of the fourth ward, and the first precinct of the fifth ward, shall constitute the twenty-eighth senatorial district and be entitled to one senator.

Twenty-ninth District.

The following precincts and wards of the city of Tacoma, in Pierce county, to wit, the seventh and eighth precincts of the third ward, the second, third, fourth and fifth precincts of the fifth ward, all of the sixth ward, the third and fourth precincts of the seventh ward, and the following precincts in the county of Pierce, outside of said city of Tacoma, to wit, Hunt's Prairie, Midland, Fern Hill, and Parkland, shall constitute the twenty-ninth senatorial district and be entitled to one senator.

Thirtieth District.

The following precincts of the county of King, to wit, Orillia, White River, Des Moines, Vashon, Chatauqua, Maury, Burton, Spring Brook, Suise Creek, Meeker, Kent, Star Lake, Buenna, Christopher, Valley, Auburn, Adelaide, Stuck, Green River, Meridian, Wabash, Osceola, Boise, Enumclaw, Birch, Krain, Cumberland, Palmer, Durham, Franklin, Black Diamond, Eagle Gorge, Webster, Hot Springs and Lester, shall constitute the thirtieth senatorial district and be entitled to one senator.

Thirty-first District.

The following precincts of the county of King, to wit, West Seattle, South Park, Mt. View, Sunnysdale, Columbia, Dunlap, Duwamish, Black River, Sprague, Renton, Newcastle, Squak, Mercer, Gilman, Cedar Mountain, Arthur, Sherwood, Preston, Falls City, North Bend, Snoqualmie, Albin, Tolt, Vincent, Novelty, Cherry Valley, Stossel, Martin Creek, Wellington and Baring shall constitute the thirty-first senatorial district and be entitled to one senator.

Thirty-second District.

The following precincts of the county of King, to wit, Yesler, Oak Lake, Richmond, Union, Samamish, Juanita, Kirkland, Houghton, Bellevue, Monohan, Redmond, Avondale, Woodinville, Ballard, including all of the town of Ballard, and the following precincts in the city of Seattle, in said county, to wit, the first, second, third, fourth, fifth and sixth precincts of the ninth ward, being all of said ninth ward, shall constitute the thirty-second senatorial district and be entitled to one senator.

Thirty-third District.

The following precincts and wards of the city of Seattle, in the county of King, to wit, the third, fifth, sixth and seventh precincts of the first ward, and all of the second ward, shall constitute the thirty-third senatorial district and be entitled to one senator.

Thirty-fourth District.

The following precincts and wards of the city of Seattle, in the county of King, to wit, all of the fourth ward and the first, second and fourth precincts of the first ward, shall constitute the thirty-fourth senatorial district and be entitled to one senator.

Thirty-fifth District.

The following portion of the city of Seattle, in the county of King, to wit, all of the fifth ward in said city, and that portion of the seventh ward bounded as follows: Beginning at the intersection of Minor avenue and Madison street, and running thence easterly on Madison street to Broadway; thence north on Broadway to East Pine street; thence west on East Pine street to Bellevue avenue; thence north on Bellevue avenue to East Denny Way; thence west on East Denny Way and Denny Way to Westlake avenue; thence south on Westlake avenue to Ninth avenue; thence southerly on Ninth avenue to Olive street; thence easterly on Olive street to Minor avenue; thence southerly on Minor avenue to the place of beginning, shall constitute the thirty-fifth senatorial district and be entitled to one senator.

Thirty-sixth District.

The following wards of the city of Seattle, in the county of King, to wit, the sixth and eighth wards of said city, shall constitute the thirty-sixth senatorial district and be entitled to one senator.

Thirty-seventh District.

The following portion of the city of Seattle, in the county of King, to wit, all of the third ward, and all that portion of the seventh ward not included in the thirty-fifth senatorial district, herein described, shall constitute the thirty-seventh senatorial district and be entitled to one senator.

Thirty-eighth District.

The following precincts in the county of Snohomish, to wit, Allen, Bear Creek, Beecher Lake, Edmonds, Fernwood, Lowell, McDonald, Marsh, Mukilteo, South Snohomish, Whaleback, Centerville, Tualco, Sultan River, Wallace, and

all of the city of Everett, shall constitute the thirty-eighth senatorial district and be entitled to one senator.

Thirty-ninth District.

The following portion of the county of Snohomish, to wit, all that portion of said county not included in the thirty-eighth senatorial district, herein described, shall constitute the thirty-ninth senatorial district and be entitled to one senator.

Fortieth District.

The county of Skagit shall constitute the fortieth senatorial district and be entitled to one senator.

Forty-first District.

All of the county of Whatcom, except the territory included in the city limits of New Whatcom and Fairhaven, shall constitute the forty-first senatorial district and be entitled to one senator.

Forty-second District.

The portion of the county of Whatcom included in the city limits of New Whatcom and Fairhaven, shall constitute the forty-second senatorial district and be entitled to one senator. [Amendment passed over governor's veto Mar. 4, 1901; L. 1901, p. 79.]

§ 59. Representatives, Apportionment for.

The state shall be divided into fifty-six representative districts, and said districts shall be constituted and numbered as follows:

First District.

The county of Stevens shall constitute the first representative district and be entitled to two representatives.

Second District.

The following portion of the city of Spokane, to wit, Adams, Delaware, Eldorado and Eureka precincts, together with Bell precinct in the county of Spokane, shall constitute the second representative district and be entitled to two representatives.

Third District.

The following precincts in the county of Spokane, to wit, Bridge, Fairfield, Latah, Little Hangman, McCoy, Mica, Mt. Hope, Moran, Nosler, Peone, Pleasant Prairie, Richland, Rockford and Saltese, and all that portion of the city of Spokane, in said county lying south of Riverside avenue, and east of Division street, in said city, shall constitute the third representative district and be entitled to two representatives.

Fourth District.

The following precincts of the county of Spokane, to wit, Abernethy, Beaver, Buckeye, Chattaroy, Cheney, Coulee, Deep Creek, Deer Park, Fancher, Five Mile, Graves, Indian Prairie, Marshall, Mayer, Medical Lake, Mount Carlton, Rock Creek, Rock Lake, Silver Lake, Spangle, Spurgeon, Spring Valley, Stevens,

Truitt, Waverly and Wells, shall constitute the fourth representative district and be entitled to two representatives.

Fifth District.

The following portion of the city of Spokane, to wit, Belmont, Blaine, Bernard, Beacon, Blake, Burton, Butler, Browne, Burke and Brickell precincts, shall constitute the fifth representative district and be entitled to two representatives.

Sixth District.

The following portion of the city of Spokane, to wit, Cleveland, Cass, Carlisle, Cannon, Carleton, Clay, Damon and Douglas precincts, shall constitute the sixth representative district and be entitled to two representatives.

Seventh District.

The following precincts of the county of Whitman, to wit, Uniontown, Clinton, North Colfax, Onecho, Seats, Almota, Penawawa, Sutton, Endicott, South Colfax, Texas, Diamond, Pampa, Winona, Johnson, Colton, Pullman, Guy, Ewartsville, Harper, second ward of Colfax, Uniontown city, South Pullman city, Colton city, first ward of Colfax, Hooper, North Pullman city, third ward of Colfax, Bethel, Hay and Russell, shall constitute the seventh representative district and be entitled to two representatives.

Eighth District.

The following precincts of the county of Whitman, to wit, Branham, Palouse, Farmington, Lone Pine, Rosalia, Steptoe, Pine city, Rock Creek, Elberton, Tekoa, Garfield, Oakesdale, St. John, Union, Thornton, Tekoa city, Rosalia city, Oakesdale city, Garfield city, Farmington city, East Palouse city, Sunset, Matlock, Cottonwood, West Palouse city, Turnbow and Elberton city, shall constitute the eighth representative district and be entitled to two representatives.

Ninth District.

The county of Asotin shall constitute the ninth representative district and be entitled to one representative.

Tenth District.

The county of Garfield shall constitute the tenth representative district and be entitled to one representative.

Eleventh District.

The county of Columbia shall constitute the eleventh representative district and be entitled to one representative.

Twelfth District.

The following precincts of the county of Walla Walla, to wit, the third and fourth wards of the city of Walla Walla, and the following precincts in said county: Wallula, Frenchtown, Lower Touchet, Hadley, Eureka, Hill, Baker, Lower Dry Creek, Prescott, Mullen, Fremont, Steptoe, Whitman and Clyde, shall constitute the twelfth representative district and be entitled to one representative.

Thirteenth District.

The following precincts of the county of Walla Walla, to wit, the first and second wards of the city of Walla Walla, and the precincts of Waitsburg, Coppie, Russell Creek, Washington, Mill Creek, Small, Dixie, Clarke, Lewis, Sims, Stevens and Ritz, of the county of Walla Walla, shall constitute the thirteenth representative district and be entitled to two representatives.

Fourteenth District.

The county of Franklin shall constitute the fourteenth representative district and be entitled to one representative.

Fifteenth District.

The county of Adams shall constitute the fifteenth representative district and be entitled to one representative.

Sixteenth District.

The county of Lincoln shall constitute the sixteenth representative district and be entitled to two representatives.

Seventeenth District.

The county of Okanogan shall constitute the seventeenth representative district and be entitled to one representative.

Eighteenth District.

The county of Douglas shall constitute the eighteenth representative district and be entitled to one representative.

Nineteenth District.

The county of Kittitas shall constitute the nineteenth representative district and be entitled to two representatives.

Twentieth District.

The county of Yakima shall constitute the twentieth representative district and be entitled to two representatives.

Twenty-first District.

The county of Klickitat shall constitute the twenty-first representative district and be entitled to one representative.

Twenty-second District.

The county of Skamania shall constitute the twenty-second representative district and be entitled to one representative.

Twenty-third District.

The county of Clarke shall constitute the twenty-third representative district and be entitled to two representatives.

Twenty-fourth District.

The county of Cowlitz shall constitute the twenty-fourth representative district and be entitled to one representative.

Twenty-fifth District.

The county of Wahkiakum shall constitute the twenty-fifth representative district and be entitled to one representative.

Twenty-sixth District.

The county of Pacific shall constitute the twenty-sixth representative district and be entitled to one representative.

Twenty-seventh District.

The county of Lewis shall constitute the twenty-seventh representative district and be entitled to three representatives.

Twenty-eighth District.

The county of Thurston shall constitute the twenty-eighth representative district and be entitled to two representatives.

Twenty-ninth District.

The following precincts of Chehalis county, to wit, Aberdeen, East Aberdeen, Cosmopolis, Montesano, East Montesano, Summit, Arctic, Connie, Elma, Oakville, Satsop, Porter, Big Canyon, Deering, Neushka, Wynooche, North River, Fords Prairie, Grove, Grand Forks, Black House and Wilson shall constitute the twenty-ninth representative district and be entitled to two representatives.

Thirtieth District.

The following portion of the county of Chehalis, to wit, the first and second wards of the city of Hoquiam, and the following precincts, Queets, Quinalt, Chepalis, Westport, Ocosta, John's River, London, Gray's Harbor, and Hump-tulips, shall constitute the thirtieth representative district and be entitled to one representative.

Thirty-first District.

The county of Mason shall constitute the thirty-first representative district and be entitled to one representative.

Thirty-second District.

The county of Kitsap shall constitute the thirty-second representative district and be entitled to one representative.

Thirty-third District.

The county of Jefferson shall constitute the thirty-third representative district and be entitled to two representatives.

Thirty-fourth District.

The county of Clallam shall constitute the thirty-fourth representative district and be entitled to one representative.

Thirty-fifth District.

The following precincts of the county of Pierce, to wit, Alderton, Breckon, Buckley, Carbonado, Dieringer, Fairfax, Kipowsin, Lake Tapps, McMillan, Morse, Nisqually, Orting, first, second and third wards of Puyallup, Reservation precinct, Rhodes Lake, South Orting, South Prairie, Sumner and Wilkeson, shall constitute the thirty-fifth representative district and be entitled to two representatives.

Thirty-sixth District.

The following precincts of the county of Pierce, to wit, Anderson Island, Artondale, Fox Island, Gig Harbor, Hillhurst, Junction, Lake Bay, Lake City, Lake View, Long Branch, Mountain View, McNeill's Island, Minter, Muck, Ohop, Purdy, Rosedale, Roy, Silver Lake, Smelter, Spanaway, Steilacoom, Tanwax, Vaughn, and the following precincts and wards in the city of Tacoma, all of the first ward, the first and seventh precincts of the second ward, the first precinct of the seventh ward, and the first and second precincts of the eighth ward, shall constitute the thirty-sixth representative district, and be entitled to two representatives.

Thirty-seventh District.

The following precincts in the city of Tacoma, to wit, the second, third, fifth and sixth precincts of the second ward, the second, ninth, tenth and twelfth precincts of the third ward, and the second precinct of the seventh ward, shall constitute the thirty-seventh representative district and be entitled to two representatives.

Thirty-eighth District.

The following wards and precincts in the city of Tacoma, to wit, the fourth precinct of the second ward, the first, third, fourth, fifth, sixth and eleventh precincts of the third ward, the fourth ward and the first precinct of the fifth ward, shall constitute the thirty-eighth representative district and shall be entitled to two representatives.

Thirty-ninth District.

The following precincts and wards in the city of Tacoma, to wit, the seventh and eighth precincts of the third ward, the second, third, fourth and fifth precincts of the fifth ward, and all of the sixth ward, the third and fourth precincts of the seventh ward, and the following precincts in the county of Pierce outside of said city of Tacoma, to wit, Hunt's Prairie, Midland, Fern Hill and Parkland, shall constitute the thirty-ninth representative district and be entitled to two representatives.

Fortieth District.

The following precincts of the county of King, to wit, Orillia, White River, Des Moines, Vashon, Chataqua, Maury, Burton, Spring Brook, Suise Creek, Meeker, Kent, Star Lake, Buenna, Christopher, Valley, Auburn, Adelaide, Stuck, Green River, Meridian, Wabash, Osceola, Boise, Enumclaw, Birch, Krain, Cumberland, Palmer, Durham, Franklin, Black Diamond, Eagle Gorge, Webster, Hot Springs, and Lester, shall constitute the fortieth representative district and be entitled to three representatives.

Forty-first District.

The following precincts of the county of King, to wit, West Seattle, South Park, Mt. View, Sunnydale, Columbia, Dunlap, Duwamish, Black River, Sprague, Renton, Newcastle, Squak, Mercer, Gilman, Cedar Mountain, Arthur, Sherwood, Preston, Falls City, North Bend, Snoqualmie, Albin, Tolt, Vincent, Novelty, Cherry Valley, Stossel, Martin Creek, Wellington and Baring, shall constitute the forty-first representative district and be entitled to two representatives.

*Forty-second District.**9th Ward*

The following precincts of the county of King, to wit, Yesler, Oak Lake, Richmond, Union, Samamish, Juanita, Kirkland, Houghton, Bellevue, Monohan, Redmond, Avondale, Woodinville, Ballard, including all of the town of Ballard, and the following precincts in the city of Seattle, in said county, the first, second, third, fourth, fifth and sixth precincts of the ninth ward, being all of said ninth ward, shall constitute the forty-second representative district and be entitled to two representatives. 2

Forty-third District.

The following precincts and wards of the city of Seattle, in the county of King, to wit, the third, fifth, sixth and seventh precincts of the first ward, and all of the second ward, shall constitute the forty-third representative district and be entitled to two representatives. 2

Forty-fourth District.

The following precincts and wards of the city of Seattle, in the county of King, to wit, all of the fourth ward, and the first, second and fourth precincts of the first ward shall constitute the forty-fourth representative district and be entitled to two representatives. 2

Forty-fifth District.

The following portion of the city of Seattle, in the county of King, to wit, all of the fifth ward in said city, and that portion of the seventh ward bounded and described as follows: Beginning at the intersection of Minor avenue and Madison street, and running thence easterly on said Madison street to Broadway; thence north on Broadway to East Pine street; thence west on East Pine street to Bellevue avenue; thence north on Bellevue avenue to East Denny Way; thence west on East Denny Way and Denny Way to Westlake avenue; thence south on Westlake avenue to Ninth avenue; thence southerly on Ninth avenue to Olive street; thence easterly on Olive street to Minor avenue; thence southerly on Minor avenue to place of beginning, shall constitute the forty-fifth representative district, and be entitled to two representatives. 2

*Forty-sixth District.**6th + 8th Wards*

The following wards of the city of Seattle, in the county of King, to wit, the sixth and eighth wards of said city, shall constitute the forty-sixth representative district and be entitled to two representatives. 2

Forty-seventh District.

The following portion of the city of Seattle, in the county of King, to wit, all of the third ward and all that portion of the seventh ward not included in the forty-fifth representative district, herein described, shall constitute the forty-seventh representative district and be entitled to two representatives. 2

Forty-eighth District.

The following precincts of the county of Snohomish, to wit, Allen, Bear Creek, Beecher Lake, Edmunds, Fernwood, Lowell, McDonald, Marsh, Muckilteo, South Snohomish, Whaleback, Centerville, Tualco, Sultan River, Wallace, and

all of the city of Everett, shall constitute the forty-eighth representative district and be entitled to two representatives.

Forty-ninth District.

All of the county of Snohomish not included in the forty-eighth representative district shall constitute the forty-ninth representative district and be entitled to two representatives.

Fiftieth District.

The county of Island shall constitute the fiftieth representative district and be entitled to one representative.

Fifty-first District.

The county of Skagit shall constitute the fifty-first representative district and be entitled to three representatives.

Fifty-second District.

The county of San Juan shall constitute the fifty-second representative district and shall be entitled to one representative.

Fifty-third District.

All of the county of Whatcom, except the territory included in the city limits of New Whatcom and Fairhaven, shall constitute the fifty-third representative district and be entitled to two representatives.

Fifty-fourth District.

The territory of the county of Whatcom, included in the city limits of New Whatcom and Fairhaven, shall constitute the fifty-fourth representative district and be entitled to two representatives.

Fifty-fifth District.

The county of Ferry shall constitute the fifty-fifth representative district and be entitled to one representative.

Fifty-sixth District.

The county of Chelan shall constitute the fifty-sixth representative district and be entitled to one representative.

Election of Senators in 1902.

At the general election to be held on the first Tuesday after the first Monday in November, 1902, and every four years thereafter, a senator shall be elected in the following numbered single senatorial districts, namely: The second, sixth, seventh, eighth, sixteenth, nineteenth, twenty-first, twenty-fourth, twenty-sixth, twenty-ninth, thirtieth, thirty-first, thirty-second, thirty-third, thirty-fourth, thirty-fifth, thirty-sixth, thirty-seventh, thirty-ninth, fortieth and forty-second, as numbered in section 1 of this act, who shall continue in office for the term of four years.

Election in 1904.

At the general election to be held on the first Tuesday after the first Monday in November, 1904, and every four years thereafter, a senator shall be elected in each of the following numbered single senatorial districts, namely, the third,

fourth, fifth, tenth, eleventh, twelfth, thirteenth, fourteenth, seventeenth, twentieth, twenty-second, twenty-third, twenty-fifth, twenty-seventh, twenty-eighth, thirty-eighth and forty-first, as numbered in section 1 of this act, who shall continue in office for the term of four years.

Election of Senators in 1902.

At the general election to be held on the first Tuesday after the first Monday in November, 1902, a senator shall be elected in each of the following numbered single senatorial districts, namely, the first, ninth, fifteenth and eighteenth, as numbered in section 1 of this act, who shall continue in office for the term of two years; and at the general election to be held on the first Tuesday after the first Monday in November, 1904, and every four years thereafter, a senator shall be elected in each of said single senatorial districts numbered one, nine, fifteen and eighteen, as numbered in section 1 of this act, who shall continue in office for the term of four years.

Election of Representatives.

The representatives provided for in this act shall be elected at the general election to be held on the first Tuesday after the first Monday in November, 1902, and every two years thereafter.

Precincts which have recently been formed, or which hereafter may be formed, or which for any reason are not mentioned herein by name, shall be part of the same senatorial and representative districts as the precincts from which they were formed.

This reapportionment shall take effect and be in force on and after the second Monday of January, 1903; Provided, however, that the first election of senators and representatives provided for in this act shall be held at the general election to be held on the first Tuesday after the first Monday in November, 1902, as hereinbefore provided. [Amendment, passed over governor's veto, Mar. 4, 1901; L. 1901, p. 79.]

§ 71. Claims Against State.

That all claims hereafter made to the legislature against the state of Washington for money or property, shall be accompanied by a statement of the facts on which such claim is based, and such evidence as the claimant intends to offer in support thereof. Legislative committees to whom such claims are referred shall make a transcript or statement of the substance of the evidence given in support of such claim; such statement, together with the transcript of the evidence taken by the committee, shall be filed with the state auditor who shall retain the same as a record of his office. [Approved Mar. 3, 1903; L. 1903, p. 59.]

§ 107. Removal from office—Power of governor.—Under the constitutional provision that "all officers not liable to impeachment shall be subject to removal for misconduct or malfeasance in office, in such manner as may be provided by law," and under Laws 1893, page 247, giving the governor power to remove any state officer appointed by him, whenever he

shall be satisfied that such officer has been guilty of misconduct or malfeasance in office or is incompetent, the summary power of removal is vested in the governor without right in the officer removed to notice and a hearing, whether his term of office be for a fixed or for an indefinite period: State v. Cheetham, 19 Wash. 330, 53 Pac. 349.

§ 115. Secretary of State—Custodian of Records.

The secretary of state is charged with the custody:

First. Of all acts and resolutions passed by the legislature.

Second. Of the journals of the legislature.

Third. Of the seal of the state.

Fourth. Of all books, records, deeds, parchments, maps and said superintendent shall with such report, remit to the state treasurer all moneys theretofore received.

The state treasurer shall credit all moneys received under the provisions of this act to a fund which shall be known as the "fund of special contributions for the insane," and shall also keep a book alphabetically arranged in which shall be entered the name and address of all persons contributing to said fund and the date and amount of any such payments, as reported by the superintendents of the hospitals for the insane.

It is hereby declared to be the policy, and to be understood, that all moneys accumulating in the said "Fund of special contributions for the insane" shall only be appropriated or used for the benefit and maintenance of the hospitals for the insane of the state of Washington. [Amendment, approved Mar. 14, 1903; L. 1903, p. 188.]

§ 115a. Secretary of State—Duties of.

The secretary of state is charged with the custody:

First. Of the seal of the state.

Second. Of all books, records, deeds, parchments, maps and papers required to be kept on deposit in his office pursuant of law:

Third. Of the enrolled copy of the constitution.

Fourth. He is the superintendent and shall have charge of the state capitol and must keep the same, together with all property therein, in good order and repair;

Fifth. He shall provide fuel, lights and stationery for the senate and house of representatives, state library, supreme court, supreme court library and for all state officers having their offices or chambers at the state capital. [Amendment, approved Mar. 17, 1903; L. 1903, p. 351, § 10 (11).]

[§§ 117, 118, 119, 120, repealed by act of 1903; L. 1903, c. 171, p. 358; § 11 (12).]

§ 126. Secretary of State—Clerks for.

The secretary of state may have one assistant secretary of state to be appointed by him in writing, and to continue during his pleasure. Such assistant secretary of state to have the power to perform any act or duty relating to the secretary of state's office, that the secretary of state has, and the secretary of state shall be responsible for the acts of said assistant. [Amendment, approved Mar. 12, 1903; L. 1903, p. 105.]

§ 134. State Auditor—Duties of.

That hereafter no state or county officer shall be allowed by the state auditor, or board of county commissioners, or any other officer or board charged with the

auditing of accounts, any sum or sums of money whatsoever for railroad or steamboat transportation, horse hire or other conveyance, hire of any kind whatsoever, or for hotel or restaurant subsistence, or any other expense, unless the same shall be presented in an account duly sworn to before some officer authorized to administer oaths, and, also attested by a voucher or vouchers duly and regularly signed by the person or agent furnishing said railroad, steamboat, horse or other conveyance. hire, hotel or restaurant subsistence for all items of expenditure exceeding fifty cents which said voucher or vouchers must, before the signing thereof by said proprietor or authorized agent, be first written out in full, plainly giving the date of the same, the amount paid, and for what purpose so paid, and in case the same is paid for railroad or steamboat hire at an office which has a regular dater-stamp used in the stamping of railroad or steamboat tickets, then in addition to the signature of the agent thereof, said dater-stamp shall be impressed thereon. Such accounts together with all vouchers, shall, upon approval and allowance of the officer or board charged with that duty, be plainly marked or stamped with the date of allowance, and duly filed in a safe place in such office, and safely kept for the period of at least three years: Provided, The same shall be at all times open to public inspection. Any person or persons violating any of the provisions of this section shall be deemed guilty of a misdemeanor.

That each state or county officer making a claim before any state auditor, board of county commissioners, or any other officer or board authorized to audit claims, shall in addition to the presentation of the said vouchers, have the same accompanied with the following oath or affirmation:

State of Washington, County of _____, ss.

I, _____, holding the office of _____, having herewith presented my account for expenses for the period ending _____, accompanied by vouchers numbered _____ to _____, inclusive, amounting to the sum of _____ dollars, I do hereby, having been first duly sworn, depose and say: That the foregoing account is just and true as herein stated, that no payment has been received by me on account thereof; that no rebate of any character, kind or description has been made to me by any person or persons furnishing any of said railroad or steamboat transportation, horse hire or subsistence; that the expenses charged were actually and necessarily incurred and paid by me in lawful money; and that each voucher herewith accompanying said account was actually written out and duly signed by the person whose signature thereon appears at the time of the payment of said money and before the delivery of the same to me, and the amount thereon was mutually understood.

Subscribed and sworn to before me this _____ day of _____, A. D. _____.

Notary Public.

[Approved Mar. 13, 1899; L. 1899, p. 106.]

[§§ 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, and 183, were repealed by act of 1901; L. 1901, c. 165, § 8, p. 336.]

[§§ 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, repealed by act of 1899, approved Mar. 13, 1899, L. 1899, p. 207, c. 118.]

[Act of 1899; L. 1899, c. 118, repealed by act of 1903; L. 1903, c. 142, p. 268.]

§ 190. **State printing board.**—Laws 1893, page 214, providing for a state printing board and granting such board full power to adopt such rules and regulations for the transaction of its business as it may deem necessary, does not contemplate that such board shall have power to direct the funds from which printing bills shall be paid; hence, a rule adopted by

them to the effect that all bills for printing for institutions located outside the capital shall be paid from the maintenance fund of such institutions is an unwarranted exercise of legislative power, where such power has not been delegated to the board by statute: *Hicks v. King*, 21 Wash. 567, 58 Pac. 1070.

§ 204. **Board of Pardons.**

That an act entitled "An act establishing a board of pardons and defining its duties, and declaring an emergency," approved March 6, 1897, be and the same is hereby repealed.

That said act entitled "An act to amend section 1 of an act entitled 'An act establishing a board of pardons and defining its duties,' and declaring an emergency," approved March 11, 1897, be and the same is hereby repealed.

An emergency exists, and this act shall take effect immediately. [Approved Mar. 3, 1899.]

§§ 204-208. **Board of pardons—Pardon-ing power under constitution.**—Laws 1897, page 49, creating a board of pardons, does not abrogate the pardoning power conferred on the governor by article 3, section 9, of the constitution, and a writ of mandate will issue to compel the secretary of state to perform the min-

isterial duty of attesting the signature and affixing the great seal to a pardon granted by the governor, although the board of pardons has recommended a commutation of the sentence, and not a full pardon: *State v. Jenkins*, 20 Wash. 78, 54 Pac. 765.

§ 208a. **Pardons—Parole of Convicts.**

That the governor shall have authority, upon recommendation of the warden of the state penitentiary, under such rules and regulations as the governor may prescribe, to suspend the sentence of, issue a parole to, and permit to go at large within the state, any convict who now is or hereafter may be imprisoned in the state penitentiary under a sentence other than a life sentence, or for the crime of murder, who may have served one year for the crime for which he was convicted, and who has not previously served one term of imprisonment in any penal institution for felony.

Every such convict while on parole shall remain in the legal custody and under the control of the governor and shall be subject at any time to be taken back within the inclosure of the prison from which he was thereby permitted to go at large, for any reason that shall be satisfactory to the governor, and at his sole discretion and full power to retake and return any such paroled convict to the prison from which he was permitted to go at large, is hereby expressly conferred upon the governor, whose written order, when duly attested by the secretary of state, shall be a sufficient warrant authorizing all officers named therein to return to actual custody in the prison from which he was per-

mitted to go at large, any such paroled convict, and it is hereby made the duty of all officers to execute said order the same as an ordinary criminal process.

This act shall not be construed to in any sense operate as a release of any convict paroled under its provisions, but simply as a suspension of his sentence and a permit granted to such convict to go without the inclosure of the prison. At the expiration of the time for which he was originally sentenced, if he has faithfully complied with his parole, the original sentence shall be held to be revoked, and said convict shall stand as fully pardoned of the crime for which he was convicted. If, however, any convict while on parole shall go beyond the limits of the state without written permission from the governor he shall be held to be an escaped convict and treated as such and retaken.

All acts and parts of acts contravening the provisions of this act are hereby repealed. [Approved Mar. 3, 1899; L. 1899, p. 37.]

§ 209. State Board of Accountancy, Creation of.

Within thirty days after this act shall take effect, the Washington Association of Public Accountants shall nominate fifteen reputable and skilled accountants, who shall have been in practice as such not less than three consecutive years, from which the governor shall appoint five. The said five skilled accountants duly elected and appointed shall constitute the board of accountancy of the state of Washington, and shall hold office, as respectively designated in their appointments, for the term of one, two, three, four and five years, as hereinafter provided, and until their successors have been duly elected and appointed. The members of such board shall, within thirty days after their appointment, take and subscribe to the oath of office as prescribed by the statutes of the state of Washington, and file the same with the secretary of state. The certified public accountants of the state of Washington, as hereinafter provided, shall annually nominate five of their number, one of whom the governor of the state of Washington shall appoint to fill the vacancy annually occurring in said board, such appointed to be for the term of five years. In case of a vacancy occurring from any cause, the governor shall fill the vacancy by appointing a certified public accountant from the names last submitted, to serve as a member of the board for the remainder of the term.

Powers and Duties of Board.

The state board of accountancy shall have its office at such place in the state of Washington as shall be designated by the board, and its powers and duties shall be as follows:

First. To formulate rules for the government of the board and for the examination of, and granting of certificates of qualification to, persons applying therefor.

Second. To hold written examination of applicants for such certificates, at least semi-annually, at such places as circumstances and applications may warrant.

Third. To grant certificates of qualifications to such applicants as may, upon examination, be found qualified in "theory of accounts," "practical accounting," "auditing" and "commercial law," to practice as certified public accountants.

Fourth. To charge and collect from all applicants such fee, not exceeding twenty-five dollars, as may be necessary to meet the expenses of examination, issuance of certificates and conducting its office: Provided, That all such expenses, including not exceeding five dollars per day for each member while attending the session of the board or conducting the examinations, must be paid from the current receipts; and no portion thereof shall ever be paid from the state treasury.

Fifth. To revoke for cause such certificates, after written notice to the holder, and a hearing being had thereon: Provided, That such revocation must receive the affirmative vote of at least four members of the board.

Sixth. To report annually to the governor, on or before the first day of January in each year, all such certificates issued during the preceding year, together with a detailed statement of receipts and disbursement: Provided, That any balance remaining in excess of the expenses incurred shall be transferred to the common school fund of the state.

Seventh. The board may, in its discretion, under regulations provided by its rules, waive the examination of applicants possessing the qualifications mentioned in subsection three of this section, who shall have been for more than one year prior to the passage of this act residents of the state of Washington, and who shall, in writing, apply for such certificate within one year thereafter.

Eighth. Every certified public accountant, during the time he continues the practice of his profession shall, annually, on such date as the board of accountancy may determine, pay to the secretary of said board of accountancy a fee of one dollar, in return for which payment he shall receive a renewal certificate for one year.

Persons Entitled to be Examined and Have Certificate.

Any citizen of the United States, or any person who has duly declared his intention of becoming such citizen, residing and doing business in the state of Washington, being over the age of nineteen years and of good moral character, may apply to the state board of accountancy for examination under its rules, and for the issuance to him of a certificate of qualification to practice as a certified public accountant; and upon the issuance and receipt of such certificate, and during the period of its existence, he shall be styled and known as a certified public accountant, and no other person shall be permitted to assume and use such title, or to use any words, letters or figures, to indicate that the person using the same is a certified public accountant.

Any person violating the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof before any court of competent jurisdiction, shall be punished by a fine in any sum not exceeding one hundred dollars. [Approved Mar. 12, 1903; L. 1903, p. 99.]

§ 209a. State Historical Society, Powers Conferred on.

That the Washington State Historical Society, a corporation, existing under the laws of the state of Washington, be and the same is hereby created the trustee of the state for the intent and purposes hereinafter mentioned, viz.:

1. That it shall be the duty of the said society to collect books, maps,

charts, papers and materials illustrative of the history of this state, and of its progress and development.

2. To procure from pioneers authentic narrative of their experiences and of incidents relating to the early settlement of this state.

3. To gather data and information concerning the origin, history, language and customs of our Indian tribes.

4. To procure and purchase books, papers and pamphlets for the several departments of its collections; climatic, health and mortuary statistics, and such other books, maps, charts, papers and materials as will facilitate the investigation of the historical, scientific and literary subjects.

5. To bind, shelf, store and safely keep the unbound books, documents, manuscripts, pamphlets and newspaper files now or hereafter to come into its possession.

6. To catalogue the collections of said society for the convenient reference of persons having occasion to consult same.

7. To prepare biennially for publication a report of its collections and such other matters relating to the work of the society as may be useful to the state and the people thereof.

8. To keep its rooms open at all reasonable hours of business days for the reception of citizens and visitors without charge.

That the books, maps, charts, relics, memorials, collections and all other property of the society now owned or hereafter acquired, shall be held by the said society perpetually in trust for the use and benefit of the people of the state of Washington.

That the governor, secretary of state and state treasurer shall be ex-officio members of the board of curators of the said Washington State Historical Society, authorized and empowered to vote upon all questions coming before the said board for its action.

That no part of the moneys hereinafter appropriated shall be paid to any officer of the said Historical Society or to any employee thereof, as salary or compensation for services. [Filed without approval Mar. 17, 1903; L. 1903, p. 377.]

§ 210. Supreme Court—Number of Judges.

The supreme court of the state of Washington, from and after the passage of this act, up and to the first Tuesday, after the first Monday in October, 1902, shall consist of seven judges: Provided, That after the first Tuesday after the first Monday in October, 1902, said supreme court shall consist only of five judges.

Appointment of.

The governor is hereby authorized to appoint one from each of the dominant political parties the two additional judges provided for by section 1 of this act, which appointees shall hold office until the first Tuesday after the first Monday in October, 1902, and no longer, and each of the said judges shall receive a salary of four thousand dollars per annum.

An emergency is hereby declared to exist and this act shall take effect from and after its passage and approved by the governor. [Approved Mar. 18, 1901; L. 1901, p. 345.]

§ 235. Of the Judges of the Superior Courts.

There shall be, from and after the passage and approval of this act, one additional judge of the superior court of the state of Washington, in and for the county of Spokane.

Appointment of.

The governor of the state of Washington shall, upon the taking effect of this act, appoint as such additional superior court judge, a person eligible and qualified according to the constitution and laws of this state, and such appointee shall be, and shall hold office as, such additional superior court judge until the next general election to be held in the state of Washington in the year nineteen hundred two, and until his successor is elected and qualified as hereinafter provided.

Election of.

At the general election to be held in the state of Washington, in the year nineteen hundred two, there shall be elected in the county of Spokane one superior court judge to take the place of, and succeed, the superior court judge mentioned in sections 1 and 2 of this act, and such judge so elected at said general election of the year nineteen hundred two shall hold his office until the second Monday of January, nineteen hundred five, and until his successor is elected and qualified.

An emergency exists and this act shall take effect immediately. [Approved Jan. 24, 1901; L. 1901, p. 4.]

Additional Judge for King County.

That hereafter there shall be four (4) judges of the superior court of the state of Washington in and for King county.

The governor shall upon the taking effect of this act appoint one (1) additional judge for said superior court, who shall hold his office from the time of appointment until his successor is elected and qualified, which said election shall take place at the general election in 1902.

Election of.

There shall be elected at the general election in 1902, one additional judge of said superior court whose term of office shall commence as soon as he is elected and qualified, and shall continue until the second Monday in January, 1905, and until his successor is elected and qualified.

That at the general election in 1904 there shall be elected four (4) judges of the superior court of the state of Washington in and for King county, whose term of office shall be four (4) years from the second Monday in January, 1905, and every four years thereafter there shall be elected four (4) judges of said superior court.

An emergency is hereby declared to exist and this act shall take effect immediately. [Approved Feb. 14, 1901; L. 1901, p. 12.]

Additional Judge for Chelan and Other Counties.

From and after the passage and approval of this act there shall be in the counties of Chelan, Douglas, Okanogan and Ferry, jointly, one superior judge, and in the counties of Adams and Lincoln, jointly, one superior judge.

Appointment of.

The governor of the state of Washington shall, upon the taking effect of this act, appoint as such superior court judge for the counties of Chelan, Douglas, Okanogan and Ferry, jointly, a person eligible and qualified according to the constitution of the state of Washington, and such appointee shall be and shall hold office as such superior court judge until the next general election to be held in the state of Washington, and until his successor is elected and qualified.

Election of.

At the general election to be held in the state of Washington in the year 1904 there shall be elected in the counties of Chelan, Douglas, Okanogan and Ferry one superior court judge who shall succeed the superior court judge mentioned in section two of this act, and shall hold his office until the second Monday in January, 1905, and until his successor is elected and qualified.

At the general election to be held in the state of Washington, in the year 1904, there shall be elected in the counties of Chelan, Douglas, Okanogan and Ferry, one superior court judge, who shall succeed the superior court judge mentioned in section two of this act and whose term of office shall commence on the second Monday of January, 1905, and who shall hold his office for four years and until his successor is elected and qualified. After the appointment and qualification of a person to serve as judge for the counties of Chelan, Douglas, Okanogan and Ferry under the provisions of this act, the judge elected at the November election of 1900 for said counties of Lincoln, Adams, Okanogan, Douglas, Ferry and Chelan, shall, during the remainder of his term of office, and until the election and qualification of his successor, remain the judge in and for the counties of Adams and Lincoln.

An emergency is hereby declared to exist, and this act shall take effect immediately. [Approved Mar. 6, 1903; L. 1903, p. 46.]

Additional Judge for King County.

That thereafter there shall be five judges of the superior court of the state of Washington in and for King county.

The governor shall, upon the taking effect of this act, appoint one additional judge for said superior court, who shall hold his office from the time of appointment until his successor is elected and qualified, which said election shall take place at the general state election in 1904.

That at the general state election in 1904 there shall be elected five judges of the superior court of the state of Washington in and for King county, whose term of office shall be four years from the second Monday in January, 1905, and every four years thereafter there shall be elected at the succeeding general state elections five judges of said superior court.

An emergency exists and this act shall take effect immediately. [Approved Feb. 13, 1903; L. 1903, p. 8.]

Uniting Thurston and Mason Counties for Judicial Purposes.

That from and after the passage of this act and until the second Monday in January, 1905, the present judge of the superior court of the state of Washington for Thurston county, shall be judge of the superior court of the state of Washington, for the counties of Thurston and Mason, and the present judge of the superior court of the state of Washington for the counties of Chehalis and Mason, shall be the judge of the superior court of the state of Washington for Chehalis county; and that at the general election held in the year 1904, and every four years thereafter, there shall be elected in the counties of Thurston and Mason jointly, one superior judge, and in the county of Chehalis, one superior judge.

An emergency exists and this act shall take effect immediately. [Approved Mar. 7, 1903; L. 1903, p. 63.]

§ 284. **Removal of county seats—Canvassing vote—Review.**—Under General Statutes, section 2462, making it the duty of the county commissioners, when an election for the removal of a county seat has been held, to receive and compare the returns and ascertain the results, and declare the place selected, if three-fifths of the legal votes cast on the proposition are in favor of any particular place, the commissioners are warranted in going behind the returns and examining the ballots cast, for the purpose of determining the result, and their action in that regard, when compliance has been had with statutory requirements, is not subject to review by the courts: *Heffner v. Board of County Commrs.*, 16 Wash. 273, 47 Pac. 430.

§ 285. **Removal of county seats—Effect of failure to canvass vote in time designated by statute.**—The failure of county commissioners to canvass the election returns upon a vote for the removal of a county seat, until more than ninety days after the election thereon, contrary to the provisions of General Statutes, section 2463, requiring them to ascertain and declare the result "not more than ninety days after the election," will not preclude the discharge of the duty imposed on them in that respect after the expiration of the time prescribed by statute, since the statutory direction is not mandatory in its terms: *Heffner v. Board of County Commrs.*, 16 Wash. 273, 47 Pac. 430.

Supplemented by Chap. 30, Laws 1917.
§ 315. Of Leasing County Property—Duties of County Board.

That the board of county commissioners of any county in this state, wherever it shall appear that it is for the best interests of such county and the people thereof, that any part, parcel or portion of the real property and its appurtenances to said county belonging, should be leased for a year or term of years, are hereby authorized and empowered to lease such property under the limitations and restrictions and in the manner hereinafter provided.

Applications to Lease.

Any person or persons desiring to lease any of such lands shall make application in writing to the board of county commissioners of such county; each application shall be accompanied with a deposit of not less than ten dollars or such other sum as the county commissioners may require, not to exceed twenty-five dollars; such deposit shall be in the form of a certified check or certificate of deposit on some bank in said county, or may be paid in cash. In case the lands so applied for shall be leased at the time they are offered, then such deposit shall be returned to such applicant by the board of county commissioners, but

if the party making such application shall fail or refuse to comply with the terms of his application and to execute such lease, then such deposit shall be forfeited to the county, and the board of county commissioners shall pay the said deposit over to the county treasurer, who shall place the same to the credit of the current expense fund of the county.

Notice of Intention to Lease.

When, in the judgment of the board of county commissioners, it is found desirable to lease the land applied for, they shall first give notice of their intention to make such lease by publishing a notice in a newspaper of general circulation within the county where such property is situated, for at least once a week for the term of three weeks, and shall also post a notice of such intention in a conspicuous place in the court house in said county for the same length of time; such notice so published and posted shall designate and describe the property which is proposed to be leased, together with the improvements thereon and appurtenances thereto, and shall contain a notice that the board of county commissioners will meet at the county court house on a day and at an hour, in such notice designated, for the purpose of leasing said property, which day and hour for such leasing shall be at a time not more than a week after the expiration of the time required by this act for the publication of the notice of such meeting.

Terms and Conditions of Lease.

At the day and hour designated in such notice or at any subsequent time to which such meeting may be adjourned by said board of county commissioners, but not more than thirty days after the day and hour of the meeting designated in said published notice, the board of county commissioners may, at their discretion, lease the property in such notice described, for a term of years and upon such terms and conditions as to the said board of county commissioners shall seem just and right in the premises; but for no longer term in any one instance, than ten years, except that such a lease may be executed to any school district of any county within the state of Washington not to exceed a term of ninety-nine years for school purposes only, and no renewal of a lease once executed and delivered shall be had, except by a releasing and reletting of said property, according to the terms and conditions of this act.

Objections, When and How Made.

Any person may appear at such meeting of the county commissioners, designated in said notice, or any adjourned meeting thereof, and make objection to the leasing of such property, which objection shall be stated in writing, and in passing upon such objection the board of county commissioners shall, in writing, briefly give their reasons for accepting or rejecting the same, and such objections, and the reasons for accepting or refusing the same shall, by said board of county commissioners, be published in the next subsequent weekly issue of the newspaper in which said notice of hearing was published.

Application of Act—To What Property Applies.

The provisions of this act shall be held to apply to all property now owned by any county in this state and to all property hereafter acquired by any county

in this state, and any lease executed under this act, shall be considered as a vested and binding contract between the county owning such property and the lessee in said lease named, and no lease shall be made except to the highest responsible bidder for the rental of such county property at the time of hearing set forth in the notice of intention to lease.

Execution of Lease.

Upon the decision of the board of county commissioner to lease the lands applied for, a lease shall be executed in duplicate to the lessee by the chairman of the board of county commissioners and the county auditor attested by his seal of office which lease shall also be signed by the lessee; such lease shall refer to the order of the board directing such lease, with a description of the lands conveyed, the periods of payment, and the amounts to be paid for each period.

An emergency is hereby declared to exist, and this act shall take effect immediately. [Approved Mar. 16, 1901; L. 1901, p. 183.]

County commissioners, powers of. Laws 1901, page 183, providing for the leasing of county property upon competitive bids has no application to a contract by the county for the lease of its ferry: *State v. King County*, 29 Wash. 360, 69 Pac. 1106.

§ 342. County Commissioners—Powers and Duties of.

That the boards of county commissioners of the several counties of this state be and they are hereby authorized and empowered to dedicate to public use land for public streets and alleys in any incorporated city or town within their respective counties through lands belonging to the several counties of this state.

That whenever the board of county commissioners of any county in this state shall deem it for the best interests of the public that any land belonging to the said county in any incorporated city or town thereof should be dedicated to the public use for streets or alleys, they shall make and enter an order upon their records, designating the land so dedicated, and shall cause a certified copy of such order and dedication so entered upon their records to be recorded in the auditor's office of the county in which the land is situated, and from and after the entry of such order of dedication and the recording thereof as herein provided, such lands shall be thereby dedicated to the public use. [Approved Mar. 14, 1903; L. 1903, p. 136.]

§ 342. County board—Auditing accounts—Duty of auditor in drawing warrant therefor.—Under General Statutes, section 281, authorizing boards of county commissioners "to allow all accounts legally chargeable against such county not otherwise provided for," and Laws 1893, page 280, section 1, providing that such claims as it is not the auditor's duty to audit shall be presented to the board of county commissioners for their examination and allowance, and that for claims allowed by the county commissioners, the auditor shall draw a warrant on the county treas-

urer, payable to the claimant or his order, when the board has approved bills which they have the legal right to approve, it is the duty of the auditor, without further question, to issue the warrants for the same: *State ex rel. Shehan v. Headlee*, 17 Wash. 637, 50 Pac. 493.

Bills of justices of the peace for salary should be presented to the county commissioners for allowance, and the action of the board in passing thereon is conclusive, in the absence of fraud or mistake. An order of the county commissioners rescinding the former action of the

board, when done at a special meeting and without any notice of the transaction of such business, is illegal and void: *State ex rel. Porter v. Headlee*, 19 Wash. 477, 53 Pac. 948.

County commissioners — Suits against county.—The fact that the county treasurer was joined with the county as plaintiff in an action seeking to enforce the collection of a tax, which was paid by the defendant under duress and compulsion, would not subject the treasurer to personal liability in an action to recover back the money so paid, since, under Ballinger's Code, section 342, subdivision 6, which provides that all actions for and on behalf of the county must be prosecuted in its name by the county commissioners, the treasurer was not a necessary party to the original action and consequently was not chargeable with any duress exercised upon defendant therein: *Hoexter v. Judson*, 21 Wash. 646, 59 Pac. 498.

County commissioner, powers and duties of.—Ballinger's Code, sections 265, 342, which authorize counties to do all necessary acts in relation to all the property of the county and empower the county commissioners to have the care of the county property and the management of the county funds and business do not contemplate that they shall go beyond their statutory authority and interfere with the conduct of county business which has been expressly defined by the legislature: *Smith v. Lamping*, 27 Wash. 624, 68 Pac. 195.

§ 356. County commissioners, record of — Evidence.—Although Ballinger's Code, section 356, requires all the proceedings of a board of county commissioners to

be recorded in a book kept for that purpose, yet proceedings which are not so recorded may be proved aliunde the record, in the absence of any statute making such record the only evidence of the board's proceedings: *Nickeus v. Lewis County*, 23 Wash. 125, 62 Pac. 763.

A board of county commissioners has power to amend its records, even after adjournment, so as to make them show the true orders made by the board: *Olympian Tribune Pub. Co. v. Byrne*, 28 Wash. 79, 68 Pac. 335.

The fact that the entry of an order on the records of the county commissioners accepting a bid for printing unconditionally was corrected about one month subsequently, by making the records show that a condition had been ordered attached to the acceptance, would not give the bidder any intervening rights between the original entry and date of correction, where nothing had been done under the proposed contract, which in fact could not have been operative until some three weeks subsequent to the date of the correction, and there is nothing to show that the bidder relied upon the unconditional acceptance shown by the record to his disadvantage: *Id.*

§ 359. County commissioners — Allowance of claims — Suits thereon.—The action of a board of county commissioners in asserting that they would not allow a bill which had been presented to them, and that they would not put anything on record allowing or rejecting the bill constitutes such a rejection thereof as would warrant the claimant in commencing an action to enforce its collection: *Nickens v. Lewis Co.*, 23 Wash. 125, 62 Pac. 763.

§ 365. Repealing County Blank Law.

That an act entitled "An act providing for a uniform system of public blanks for use in the counties of the state of Washington, and regulating the manufacture and sale thereof by the state," approved March 6, 1897, and found on pages 47 and 48 of the laws of 1897, be and the same is hereby repealed.

The state auditor, with the advice and aid of the attorney general, shall compile forms for all public blanks used in the counties of this state, in conformity with the statutes thereof, and shall keep the same on file in his office open for the inspection of the public; and said forms shall be used uniformly by the respective counties of this state.

All public blanks referred to in section 2 hereof shall be procured by each county respectively at its own cost.

The term "public blanks" as used in this act is intended to include detail and assessment lists or schedules now or hereafter required by law. [Approved Mar. 13, 1899; L. 1899, p. 134.]

[§§ 367, 368, 369, repealed by act of Mar. 3, 1899; L. 1899, p. 207, c. cxviii.]

[Act of 1899, c. cxviii, repealed by law of 1903, c. 142, p. 268.]

§ 393. Justice salary—By whom audited.—Under Laws 1893, page 280, section 1, a claim for salary as justice of the peace must be presented to the board of county commissioners for their examination and allowance, and upon their refusal to allow same, mandamus will not lie to compel payment, since there is a remedy by appeal from the action of the board of commissioners: *State ex rel. Banks v. Board of Commrs., etc.*, 18 Wash. 160, 51 Pac. 368.

Costs in misdemeanor cases—Warrants drawn by auditor.—Under Ballinger's Code, sections 393, 472, and 1630, it is the duty of the county auditor to draw warrants in payment of costs in misdemeanor cases, which have been approved by the prosecuting attorney and certified by the judge trying the case, and it is unnecessary that such cost-bills should be presented to the county commissioners for examination and allowance in order to authorize the auditor to is-

due his warrants thereon: *State ex rel. Crawford v. Evenson*, 18 Wash. 609, 52 Pac. 230.

§ 412. County auditors, duties of.—The legislature having made provision by Ballinger's Code, section 412, prescribing the kind of index of conveyances and mortgages to be kept by the county auditor, and expressly making it his duty to follow the method therein prescribed, negatives the idea that the county commissioners have authority to direct the preparation of a different method by other parties at public expense: *Smith v. Lamping*, 27 Wash. 624, 68 Pac. 195.

§ 426. A county treasurer and his bondsmen are liable for the loss of public moneys through the failure of a bank, where they have been deposited by the treasurer, though the deposit therein had been made with the knowledge, consent and approval of the county commissioners: *County of Kittitas v. Travers*, 16 Wash. 528, 48 Pac. 340.

§ 444. Seals for County Treasurers.

The county treasurer in each of the organized counties of the state of Washington shall be by his county provided with a seal of office for the authentication of all tax deeds, papers, writing and documents required by law to be certified or authenticated by him. Such seal shall bear the device of crosskeys and the words: Official Seal Treasurer ——— County, Washington; and an imprint of such seal, together with the certificate of the county treasurer that such seal has been regularly adopted, shall be filed in the office of the county auditor of such county.

In all cases in which the county treasurer of any county in the state of Washington shall have executed a tax deed or deeds prior to the taking effect of this act, either to his county or to any private person or persons or corporation whomsoever, said deed or deeds shall not be deemed invalid by reason of the county treasurer who executed the same not having affixed a seal of office to the same, or having affixed a seal not an official seal; nor shall said deed or deeds be deemed invalid by reason of the fact that at the date of the execution of said deed or deeds there was in the state of Washington no statute providing for an official seal for the office of county treasurer.

An emergency exists, and this act shall take effect immediately. [Approved Feb. 21, 1903; L. 1903, p. 13.]

§ 466. A prosecuting attorney has no authority to institute an action in the name of the county against the county commissioners to restrain them from bonding certain warrant indebtedness of the county: *Spokane County v. Bracht*, 23 Wash. 102, 62 Pac. 446.

§ 516. Sheriff — Privileges. — Ballinger's Code, section 516, which permits the sheriff to exact an indemnity bond as a condition precedent to the execution by him of civil process, is not superseded by Ballinger's Code, sections 5262-5266, which authorize the sheriff to proceed

with the sale of property levied upon unless a claimant thereto shall make affidavit of ownership and give bond to make good his title, since the latter sections are not intended to prescribe the

sheriff's duties, but merely to give the claimant of property levied upon an additional remedy for its recovery: *Carpenter v. Barry*, 26 Wash. 255, 66 Pac. 393.

§ 529. Coroners—Powers of.

The coroner may issue subpoenas for witnesses to the sheriff or any constable of the county, returnable forthwith or at such time and place as he may appoint, which may be served by any competent person. He must summon and examine as witnesses, on oath by him administered, every person, who, in his opinion or that of any of the jury, has any knowledge of the facts, and he may summon a surgeon or physician to inspect the body and give under oath a professional opinion as to the cause of the death. The fees for the coroner's physician or surgeon shall not be less than ten (\$10) dollars: Provided, That in counties between the first and eighth classes inclusive the fee herein provided shall not apply. [Amendment, approved Mar. 18, 1901; L. 1901, p. 272.]

§ 537. Burials by.

In all cases where no demand for the body for burial shall be made by friends of the deceased, the coroner shall provide for such burial at an expense not exceeding seventy-five dollars, to be paid by the estate of the deceased if it be sufficient. [Amendment, approved Feb. 14, 1901; L. 1901, p. 11.]

§ 701. Cities and Towns—Proceedings to Incorporate.

That whenever a petition shall be presented to the council of any incorporated town or city of the fourth class in this state, signed by not less than five electors of such town or city, setting forth that in the belief of said petitioners, the boundaries of said town or city of the fourth class are indefinite or uncertain, and that on account of such indefiniteness and uncertainty the legality of the taxes levied within such town or city are in danger of being affected, and setting forth the particular causes or reasons of such alleged indefiniteness or uncertainty, it shall be the duty of the town or city council of such town or city, to cause said petition to be filed and recorded by the clerk, and to cause a copy of the same to be made and certified by the clerk and the corporate seal of such town or city to be attached to said certificate, and the mayor of such town or city shall forthwith present said certified copy of said petition to the board of county commissioners of the county wherein said town or city is situate, with a written request to be signed by him as such mayor that the said board of county commissioners proceed to examine the boundaries of such town or city, and make the same definite and certain.

It shall be and is hereby made the duty of said board of county commissioners upon receipt of said certified copy of said petition, and the request aforesaid, to cause the same to be filed in the office of the auditor of said county, and to forthwith proceed to examine the boundaries of such town or city, and to make the same definite and certain. For this purpose they may employ a competent surveyor, and shall commence at some recognized and undisputed point on the boundary line of such town or city, if such there be and in case there

be no such recognized and undisputed point, they shall establish a starting point from the best data at their command and from such starting point they shall run a boundary line by courses and distances around such town or city, in one tract or body.

It shall be and is hereby made the duty of the said board of county commissioners, without unnecessary delay, to make and file a report of their doings in the premises in the office of the auditor of said county, who shall transmit a certified copy thereof under the seal of the county, to the clerk of said town or city, and the said clerk shall record the same in the records of said town or city, and keep the said copy on file in his office. Said report shall contain the description of the boundary of said town or city, as fixed by said board, written in plain words and figures and the boundaries so made and fixed shall be the boundaries of such town or city, and all the territory included within the boundary lines so established shall be included in the said town or city, and be a part thereof.

The expense of such proceedings shall be paid by the town or city at whose request the same shall be incurred. The said commissioners shall each receive as compensation, an amount not exceeding the amount allowed by law for their usual services as commissioners, and, any surveyor or other assistants employed by them, a reasonable compensation to be fixed and certified by said commissioners.

An emergency exists and this act shall take effect immediately. [Approved Mar. 13, 1899; L. 1899, p. 126.]

§ 702a. To Validate Municipal Corporations.

Any municipal corporation which has been incorporated under the existing laws of this state shall be a valid municipal corporation notwithstanding a failure to publish the notice of the election held or to be held for the purpose of determining whether such city should or shall become incorporated, for the length of time required by law governing such incorporation: Provided, A notice fulfilling in other respects the requirements of law shall have been published for one week prior to such election in a newspaper printed and published within the boundaries of the corporation.

An emergency exists and therefore this act shall take effect immediately. [Approved Mar. 13, 1889; L. 1899, p. 102.]

§ 705. Contracts for local improvements in towns illegally incorporated under the acts of 1888 and 1890 are expressly validated by Laws 1893, page 183, providing for the legalization of towns which had attempted to incorporate or reincorporate under General Statutes, sections 496-500; and a reassessment for such improvements is authorized by Laws 1893, page 226, since the invalidity of assessments during the period of void

incorporation had been adjudicated by the courts in the case of other towns similarly situated: *State ex rel. Hemen v. Ballard*, 16 Wash. 418, 47 Pac. 970.

§ 708. The question whether a municipal corporation has legally included adjoining territory in its corporate limits cannot be raised by a private citizen in an action to restrain the collection of taxes: *Frace v. City of Tacoma*, 16 Wash. 69, 47 Pac. 219.

§ 709. Consolidation of—Effect Upon Indebtedness.

Two or more contiguous municipal corporations may become consolidated into one corporation after proceedings had as required in this section. The

council, or other legislative body, of either of such corporations, shall upon receiving a petition therefor, signed by not less than one-fifth of the qualified electors of each of such corporations, as shown by the votes cast at the last municipal election held in each of such corporations, submit to the electors of each of such corporations the question whether such corporations shall become consolidated into one corporation. Such legislative body shall designate a day upon which a special election shall be held in each of such corporations to determine whether such consolidation shall be effected, and shall give written notice thereof to the council or other legislative body of each of the other of such corporations, which notice shall designate the names [name] of a proposed new corporation. It shall thereupon be the duty of such legislative body of each of the corporations so proposed to be consolidated to give notice of such election by publication in a newspaper, printed and published in such corporation, for a period of four weeks prior to such election. Such notice shall distinctly state the proposition to be submitted, the name of the corporation so proposed to be consolidated, the name of the proposed new corporation, and the class to which such proposed new corporation will belong, and shall invite the electors to vote upon such proposition by placing upon their ballots the words "For consolidation," or "Against consolidation," or words equivalent thereto. The legislative bodies of each of such corporations shall meet in joint convention at the usual place of meeting of the legislative body of that one of the corporations having the largest population, as shown by the last state census, on the Monday next succeeding the day of such election, and proceed to canvass the votes cast thereat. The votes cast in each of such corporations shall be canvassed separately; and if it shall appear upon such canvass that a majority of the votes cast in each of such corporations shall be for consolidation, such joint convention, by an order entered upon their minutes, shall cause the clerk or other officer performing the duties of clerk, of the legislative body at whose place of meeting such joint convention was held, to make a certified abstract of such vote, which abstract shall show the whole number of electors voting at such election in each of such corporations, the number of votes cast in each for consolidation, and the number of votes cast in each against consolidation. Such abstract shall be recorded upon the minutes of the legislative body of each of such corporations, and immediately upon the record thereof, it shall be the duty of the clerk, or other officer performing the duties of clerk, of each of such legislative bodies, to transmit to the secretary of state a certified copy of such abstract. Immediately after such filing the legislative body of that one of such corporations having the greatest population, as shown by the last state census, shall call a special election, to be held in such new corporation, for the election of the officers required by law to be elected in corporations of the class to which such new corporation shall belong; which election shall be held six months thereafter. Such election shall be called and conducted in all respects in the manner prescribed, or that may hereafter be prescribed by law for municipal elections in corporations of such class, and shall be canvassed by the legislative body so calling the same, who shall immediately declare the result thereof and cause the same to be entered upon their journal. From and after the date of such entry such corporation shall be deemed to be consolidated into

one corporation under the name and style of the city (or town, as the case may be), of ——— (naming it), with the powers conferred or that may hereafter be conferred by law upon municipal corporations of the class to which the same shall so belong and the officers elected at such elections shall be entitled immediately to enter upon the duties of their respective offices, upon qualifying in accordance with law, and shall hold such offices respectively, only until the next general municipal election to be held in such city or town, and until their successors are elected and qualified. All the provisions of sections five and six of this act shall apply to such corporations and to the officers thereof: Provided, That in all cases wherein cities and towns of the third and fourth class desire annexation to cities of the first class no election shall be required to be held in such cities of the first class. When any city or town of the third or fourth class shall vote in favor of annexation to any city of the first class, the legislative body of such city or town so voting shall canvass such votes, and if in favor of annexation, shall forthwith file a petition, together with an abstract of the votes so taken and canvassed with the city council of such city of the first class, praying for annexation under the name of such city of the first class. At the next regular meeting of the city council of said city of the first class following the filing of such petition and abstract, or as soon thereafter as practicable, said city council shall proceed to hear such petition with abstract attached, for annexation, and if said council so deem it wise and expedient to take or annex such city or town of the third or fourth class, then the city council of said city of the first class shall pass a resolution requiring its corporation counsel to prepare an ordinance as required by law and the charter of said city covering the annexation of said cities or town, and present the same to the city council. Upon the taking effect of said ordinance of such city of the first class, such city or town so desiring to be annexed shall thereupon become a part of such city of the first class under the name of such city of the first class and subject to all its laws and ordinances then and there in force and simultaneously the terms of office of the officials of the city or town so annexed shall terminate. And it shall be the duty of the clerk of said city of the first class to forthwith transmit to the secretary of state a certified copy of the proceedings so had before said city of the first class relating to said matters of annexation. And further provided, That no property within either of the former corporations so consolidated shall ever be taxed to pay any portion of any indebtedness of either of the other of such former corporations, contracted prior to, or existing at, the date of such consolidation. [Amendment, approved Mar. 16, 1903; L. 1903, p. 279, § 1.]

§ 719. Unclassified Cities—Powers of Cities.

The council or other legislative body, of all cities within the state of Washington which were created by special charter prior to the adoption of the state constitution, and which have not since reincorporated under any general statute, shall have, in addition to the powers specially granted by the charter of such cities, the following powers:

1. To construct, establish and maintain drains and sewers.

2. To impose and collect an annual license not exceeding two dollars on every dog owned or harbored within the limits of the city.

3. To levy and collect annually a property tax on all property within such city.

4. To license all shows, exhibitions and lawful games carried on therein; and to fix the rates of license tax upon the same, and to provide for the collection of the same by suit or otherwise.

5. To permit, under such restrictions as they may deem proper, the construction and maintenance of telephone, telegraph and electric light lines therein.

6. To impose fines, penalties and forfeitures for any and all violations of ordinances; and for any breach or violation of any ordinance; to fix the penalty by fine or imprisonment or both (but no such fines shall exceed three hundred dollars or the term of imprisonment or both;) but no such fine shall exceed three hundred dollars nor the term of imprisonment exceed three months.

7. To cause all persons imprisoned for violation of any ordinance to labor on the streets or other public property or works within the city.

8. To make all such ordinances, by-laws and regulations, not inconsistent with the constitution and laws of the state of Washington, as may be deemed expedient to maintain the peace, good government and welfare of the city, and to do and perform any and all other acts and things necessary and proper to carry out the purposes of the municipal corporation. [Approved Mar. 13, 1899; L. 1899, p. 112.]

Before letting any contract for the construction of any sewer or drain, or system of sewerage or drainage, the mayor and council shall by ordinance or resolution adopt the plans therefor and shall fix and establish the assessment district, if the same is to be constructed at the expense of a district, and such cities and towns are hereby authorized to charge the expense of such sewer or drain to all the property included within such district which is contiguous or approximate to any street in which any main pipe or lateral pipe of such sewer, drain or sewer system is to be placed, and to levy special taxes upon such property to pay therefor, which assessment and tax shall be levied in accordance with the last general assessment of the land, exclusive of all improvements, within said district for city purposes: Provided, however, That a sum not exceeding twenty-five per cent of the total cost of such improvements, chargeable to the abutting property, may be paid out of the current expense fund if so ordered by a unanimous vote of the city council. [Amendment of 1903; L. 1903, p. 30.]

The city council shall have power to provide by ordinance a complete system for the assessment, levy, and collection of all city taxes. All taxes assessed together with any percentage imposed for delinquency and the cost of collection, shall constitute liens on the property assessed from and after the first day of November each year: which liens may be enforced by a summary sale of such property, and the execution and delivery of all necessary certificates and deeds therefor, under such regulations as may be prescribed by ordinance or by action in any court of competent jurisdiction to foreclose such liens: Provided, That any property sold for taxes shall be subject to redemption within the time and within the manner provided or that may hereafter be provided by

law for the redemption of property sold for state and county taxes. [Approved Mar. 13, 1899; L. 1899, p. 112.]

§ 723. Advancement of Cities and Towns.

When a petition signed by one hundred freeholders of a town, or two hundred freeholders of a city of the third class, is presented to the council of the corporation in which the signers reside, setting forth that they desire such town to be advanced to a city of the third class, or such city of the third class to a city of the second class, and that they have the population requisite for such advancement, the council shall cause notice to be given by the mayor as in other cases, that at the next annual election for officers of such city or town, or at a special election to be called for that purpose, the electors may vote for or against the advancement, their ballots to contain the words "For advancement" or the words "Against advancement." [Amendment, approved Mar. 13, 1899; L. 1899, p. 102.]

§ 739. Additional Powers of Cities of First Class—Division into Wards.

That whenever, by the charter of any city of the first class, within the state of Washington, the common council of such city shall be forbidden from redistricting and redividing such city into wards except at stated intervals or periods, and such city shall have neglected or failed to redistrict or redivide such city into wards at any such interval or period, it shall be lawful for the common council of such city, by ordinance, to redistrict or redivide such city into wards at any time thereafter: Provided, That there shall be not more than one redistricting or redivision into wards within the period specified in such charter provision. [Approved Mar. 16, 1903; L. 1903, p. 267.]

Mode of Charging Lands with Special Assessments.

That cities of the first class shall have power by general ordinance to prescribe the mode in which the charge on respective lots and parcels of land shall be assessed and determined for the purpose of special assessments to pay the cost and expense of any local improvements. Such charge when assessed and the assessment roll confirmed by the legislative body of such city in the manner provided, or to be hereafter provided, by ordinance or city charter, shall be a lien upon the property assessed from the time said assessment roll shall be placed in the hands of the officer authorized by law or the charter and ordinances of such city to collect such assessments. Said lien shall be paramount and superior to any other lien or incumbrance whatsoever, theretofore or thereafter created except a lien for assessments for general taxes.

Objections—How Made—Limitations of Time to Make.

Whenever any assessment roll for local improvements shall have been prepared as provided by law, charter or ordinance of any city of the first class, and such assessment roll shall have been confirmed by the council or legislative body of such city, after due and proper notice to the property owner, as provided by law, charter or ordinance, so that said owners of property may have a reasonable opportunity to object to or protest against any assessment, the regularity,

and correctness of the proceedings to order said improvement, and the regularity, validity and correctness of said assessment cannot in any manner be contested or questioned in any proceeding whatsoever by any person not filing written objections to such roll, prior to the same being confirmed. as aforesaid, and at such time or times as may be prescribed by charter or ordinance. Upon any objections being filed as aforesaid, the council or other legislative body, at the time set for hearing objections to the confirmation of said roll, or at such time as said hearing may be adjourned to, shall have power to correct, revise, change or modify such roll, or any part thereof, and to set aside such roll and order that said assessment be made de novo, as to such body shall appear equitable and just, and shall confirm the same, as corrected, by resolution or ordinance, in conformity with the charter of such city. All objections shall state clearly the grounds of objection, and objections to such assessment roll or to the assessment proceedings not made before such council, or other legislative body, as aforesaid, shall be conclusively presumed to have been waived. The decision of the council or other legislative body upon any objections filed as aforesaid may be reviewed by the superior court upon an appeal thereto taken in the following manner. Such appeal shall be made by filing written notice of appeal with the city clerk of such city within ten days after the assessment roll shall have been confirmed, as aforesaid, and such notice shall describe the property and the objections of such appellant to such assessment; and, within ten days from the filing of such notice of appeal, the appellant shall file with the clerk of the superior court of the county in which such city may be situated a copy of such notice of appeal, a transcript of the assessment roll, of the objections thereto filed by him with the city clerk, as aforesaid, the order confirming such assessment roll, and the record of the council or other legislative body with reference to said assessment, which transcript shall be furnished and certified to by the city clerk as being a true copy of the original, upon payment of the necessary fees therefor. Such fees shall be the same as the fees payable to the county clerk for the preparation and certification of transcripts on appeal to the supreme court in civil actions. At the time of the filing of the transcript on appeal, the appellant shall execute and file with the clerk of the superior court a sufficient bond with at least two sureties (provided, however, that any surety company authorized by the laws of the state of Washington to become surety upon appeal bonds shall be deemed sufficient security), to be approved by the judge of said court, conditioned to prosecute such appeal without delay and, if unsuccessful, to pay all costs to which the city is put by reason of such appeal. Such bonds shall be for a penal sum of not less than two hundred dollars. Said cause shall be docketed by the clerk of such court in the name of the person taking such appeal as plaintiff and against said city as defendant as "an appeal from assessment." Within three days after such transcript is filed in the superior court, as aforesaid, the appellant shall give written notice to the head of the legal department of such city, and to the city clerk, that such transcript is filed. Said notice shall state a time (not less than three days from the service thereof) when the appellant will call up the said cause for hearing; and the superior court shall, at said time or at such further time as may be

fixed by order of the court, hear and determine such appeal without a jury; and such cause shall have preference over all civil causes pending in said court, except proceedings under an act relating to eminent domain in cities and towns and actions of forcible entry and detainer. The judgment of the court shall confirm, correct, modify or annul the assessment in so far as the same affects the property of the appellant. A certified copy of the decision of the court shall be filed with the officer who shall have custody of the assessment roll, and he shall modify and correct such assessment roll in accordance with such decision, if any modification thereof be required to make such roll conform to such decision. An appeal shall lie to the supreme court from the judgment of the superior court, as in other cases: Provided, however, That such appeal must be taken within fifteen days after the date of the entry of the judgment of such superior court; and the record and opening brief of the appellant in said cause shall be filed in the supreme court within sixty days after the appeal shall have been taken by notice as provided in this act. The time for filing such record and serving and filing of briefs in this section prescribed may be extended by order of the superior court, or by stipulation of the parties concerned. And the supreme court, on such appeal may correct, change, modify, confirm or annul the assessment in so far as the same affects the property of the appellant. A certified copy of the order of the supreme court upon such appeal shall, within fifteen days after the entry of such order, be filed with the officer having custody of such assessment roll, who shall thereupon modify and correct such assessment roll in accordance with such decision, if any modification or change thereof be required to make such roll conform to such decision.

Decision of Council Conclusive—As to What Matters.

The action of the council or other legislative body, hereinbefore mentioned in confirming such assessment roll shall be conclusive in all things upon all parties not appealing therefrom in the manner and within the time hereinbefore mentioned, and no proceeding of any kind shall be commenced or prosecuted for the purpose of defeating or contesting any such assessment, or the sale of any property to pay such assessment or the foreclosure of any lien herein provided for: Provided, This section shall not be construed as prohibiting the bringing of injunction proceedings to prevent the sale of any real estate upon the grounds: (1) That the property about to be sold does not appear upon the assessment roll, and (2) that said assessment has been paid.

Time of Payments to be Fixed by Council by Ordinance.

The city shall prescribe by ordinance within what time such assessments, or installments thereof, shall be paid; and may provide for the payment and collection of interest at a rate not to exceed eight per cent per annum upon all unpaid installments. Assessments or installments thereof, shall, when delinquent, bear such interest and penalty as may be by ordinance or charter prescribed. Interest and penalty shall be included in and shall be a part of the assessment lien. All assessments shall be collected and all such liens enforced in such manner as may be by charter or ordinance prescribed.

Sale of Property for Assessments.

Such cities may by charter or ordinance provide for the sale of the property described in the assessment roll, after the assessment or any installment thereof shall have become delinquent, for the amount of such delinquent assessment or installment, and whatever penalty and interest may have accrued, and for the costs of such sale; and for the execution and delivery by the officer making such sale of certificates of sale to the purchaser, and for the execution of an assessment deed to the person entitled thereto under the provisions of said charter or ordinance: Provided, however, That such sale shall not be made until after reasonable notice thereof, to be prescribed by the charter or ordinance, shall have been published: And provided further, That there shall be a period of redemption of any property sold as aforesaid within the same time and by the same persons, at least, as may be provided by law for the redemption of real estate sold upon execution. Said cities may prescribe by ordinance or charter that such assessment deeds shall be conclusive of all things pertaining to any and all prior proceedings of which such deeds can, under the constitution of the United States and of the state of Washington, be made conclusive, and shall convey the entire title to the property therein described stripped of all prior liens and claims, except unpaid assessments and general taxes. The city may by ordinance or charter prescribe that the county treasurer shall be the collector of all delinquent assessments; and such treasurer shall, thereupon, make such collections, and shall do all things, including the advertisement and sale of lots and parcels of land, the execution and delivery of certificates of sale, the execution and delivery of assessment deeds, and the acceptance of redemption money, as may be necessary to enforce [enforce] the collection of such assessments, and installments thereof, and to foreclose the assessment liens as prescribed by charter or ordinance; but all expenses of such proceedings shall be paid by the city: Provided, however, That the treasurer shall not receive from such city any compensation for such services. All such moneys which may be collected or received by such treasurer, or which may come into his hands as such collector, shall be paid by him to such city in such manner and at such times as such city shall prescribe by charter or ordinance.

Collection by Suit at Law.

Whenever any city of the first class made by charter or ordinance provide for the collection of any assessment, or installment thereof, or the enforcement of any assessment lien, by proceedings in court, it may bring an action in its own name for such purpose in the superior court in the county where such city is situate. In any such proceeding, all owners of property upon which there are delinquent assessments, or installments thereof, arising under a single roll, may be joined as defendants, and all liens for such delinquent assessments, or installments thereof, may be foreclosed in such proceeding. Such proceeding shall be tried before the court without a jury; and, if in such proceeding the court shall find that there is any amount properly chargeable to any of the lots or parcels of land included therein for the making of said improvement, it shall enter judgment therefor, and for all costs, against such lot or parcel of land.

and shall decree that such land shall be sold to enforce such judgment, and execution shall issue for the enforcement of such decree. In any such proceeding, it shall be sufficient to allege the passage of the ordinance authorizing such assessment, the levying of the assessment, the confirmation thereof and the failure to pay such assessment, or installment thereof, within the time prescribed. The assessment roll and confirmatory order, or duly authenticated copies thereof, shall be prima facie evidence of the regularity and legality of the proceedings connected therewith, and the burden of proof shall be upon the defendants.

Certificates of Delinquency.

Any city of the first class may by charter or ordinance provide for the issuance of certificates of delinquency for any and all delinquent assessments, or installments thereof, and any interest and penalty thereon which may be due. Such certificates of delinquency shall constitute a lien against the property upon which such assessments were levied, and shall bear interest from the date of issuance thereof at a rate to be prescribed by ordinance, not to exceed fifteen per cent per annum, and shall be foreclosed, after a period prescribed by ordinance (not exceeding three years) in the same manner and with the same effect as mortgages upon real estate are foreclosed. Such certificates may be issued to the city, or may be sold to any person applying therefor upon payment of the value and principal, interest and penalty thereof. They may be assigned in writing, and the city may sell and assign any and all certificates which may be issued to it upon the payment of the value thereof in principal and accrued interest, in cash. Such certificates may contain or import such guaranty as the city may by charter or ordinance prescribe. They shall be prima facie evidence that the land against which the same were issued was subject to the assessment at the time the same was assessed, that the property was assessed as required by law, and that the assessment, or installments thereof, were not paid prior to the issuance of such certificates.

Purchase of Property by City—Subsequent Proceedings.

At all sales of lots or parcels of land for the enforcement of assessments, or foreclosure of assessment liens whether after publication of notice, under decree of court or by foreclosure of delinquent assessment certificates issued to the city (which certificates may be foreclosed by the city in an action brought in its own name), or otherwise, the property offered for sale shall be struck off to the city for the amount of the delinquent assessment, interest, penalty and costs, if there be no bid therefor equal to or exceeding the amount of the assessment and such penalty, interest and costs as may then be due; and certificates of sale and deeds shall be issued to such city in the same manner and with the same effect as to any other bidder: Provided, however, That said city shall hold such property as trustee of the fund for the creation of which such assessment was levied: Provided, further, That said city may, at any time prior to the expiration of the period of redemption, pay into such fund the amount of the delinquent assessment, with accrued interest to the time of the next call for bonds or warrants issued against such assessment fund at the rate provided

for such bonds or warrants, upon such lot or parcel of land, and shall, thereupon, hold such lands discharged of such trust. If any lot or parcel of land shall be held by such city as trustee, as aforesaid, until the period of redemption shall have expired, said city shall, thereupon, advertise in such manner and for such time as may be prescribed by charter or ordinance such lot or parcel of land for sale at public auction, and shall sell the same, pursuant to a notice, to the highest bidder therefor for cash, but no bid shall be accepted of an amount less than the face of the delinquent assessment upon such lot or parcel of land, plus the interest accruing, to the date of sale computed at the rate provided for delinquent assessments, and all penalties and costs which may have accrued, with interest thereon at the same rate; and, of the moneys received at such sale or sales, there shall be paid into the fund for the creation of which such assessment shall have been levied an amount equal to the assessment upon such lot or parcel of land, plus the interest accruing thereon computed to the time of the next call for bonds or warrants issued against such fund at the rate prescribed for such bonds or warrants. If at such sale there shall be no bid in the amount aforesaid, said city may sell such lot or parcel of land at private sale for bonds or warrants issued against the said assessment fund to any person who will surrender to such city an amount of such warrants or bonds, which, with accrued interest, shall equal the amount of the assessment against such lot or parcel of land plus the accrued interest thereon, and all costs which may have been incurred, or for lawful money of equal amount. Bonds or warrants so surrendered and delivered to the city shall be canceled.

Collection of Subsequent Installments.

When the assessment upon property is payable in installments, the foreclosure of the lien of any installment, by sale or otherwise, shall not prevent the foreclosure of any subsequent installment, when the same may become due; but such subsequent installment may be collected and the lien thereof enforced in the manner provided. But the purchaser of any property at the foreclosure of any installment may pay all subsequent accruing installments, assessments or taxes upon the property so sold, while the same remains unredeemed, and such purchaser shall be entitled to collect, upon the redemption of such land, in addition to the purchase price and interest thereon, the amount of such subsequent payment or payments, with interest thereon at a like rate from the date of payment: Provided, however, That such city may provide by charter or ordinance that upon failure to pay any installment when due, the entire assessment shall become due and payable and the collection thereof enforced in the manner prescribed.

Application of Provisions of Act.

That the provisions of this act shall, so far as practicable, extend to the collection of any local improvement assessment or assessments, or to the enforcement of the lien or liens thereof, heretofore, as well as hereafter, levied or created; and cities of the first class may exercise the authority hereby conferred and the ways and means hereby authorized in the collection of existing assessments and the foreclosure of existing assessment liens: Provided, That nothing

From Note

contained shall prevent or be construed to prohibit the assessment or collection of any local improvement assessment in any manner now, or which may be, provided by law or charter, but any city of the first class may pursue the means now, which may be, provided by charter or law for the levy, collection and enforcement of local improvement assessments; but the authority hereby conferred and the ways and means hereby authorized shall be considered as additional and concurrent. Nothing herein contained shall be construed as making any city liable to the holder of any local improvement bonds or warrants which are payable only from the proceeds of special assessments; and the holder of any such bonds or warrants shall look only to the fund provided by such assessment for the principal or interest of such bonds or warrants, and shall have no claim therefor against the city by which the same are issued, except from the special assessments levied for the improvement and funds thereby created. [Approved Mar. 16, 1901; L. 1901, p. 240.]

Ratification of Invalid Warrants.

Any city which has adopted a charter under the provisions of an act entitled "An act to provide for the government of cities having a population of twenty thousand (20,000) or more inhabitants, and declaring an emergency to exist," approved March 24, 1890, may by resolution duly passed, in accordance with its charter, ratify any warrants or other obligations and evidences of indebtedness on the part of such city issued prior to the approval of this act by the corporate authorities thereof for the salaries or compensation of its elective officers, where the services of such officers have been fully and regularly rendered and performed and the only ground of invalidity of such warrants, obligations, and evidences of indebtedness is that the compensation of such officers was not prescribed in the charter of such city at the time the services were performed for which such warrants, obligations or evidences of indebtedness were issued. [Approved Mar. 1, 1901; L. 1901, p. 39.]

Power to Accept Donations.

If any person or persons shall desire and propose to donate to any city of the first class a building for a public library, museum, or art gallery, or the money with which to erect any such building, and shall demand or require that such city shall provide a site for such building and guarantee a certain sum for the annual maintenance of such library, museum, or art gallery, such city may purchase land upon which to build any such building and may pay for the same by an annual tax levy or by the issue of bonds in the manner now prescribed by law for the issuing of bonds for other purposes; and any such city in the like case may also comply with such conditions or requirements by setting apart and appropriating to such site any of its lands acquired for parks or other public purposes and available for the uses of such site, and may appropriate for maintenance any income of its library fund not otherwise appropriated.

For the purpose of securing such donation the city council of such city may contract with such donor or donors for the annual expenditure of a certain sum for the maintenance and uses proposed as set forth in section 1 of this

act, and may levy an annual tax for such purpose in addition to the income provided by law therefor.

An emergency exists and therefore this act shall take effect immediately. [Approved March 11, 1901; L. 1901, p. 119.]

§ 739. Cities of first class—Liability of city for negligence.—Where under its charter a city is given the management, control and superintendence of public streets and of the making of improvements therein, and the management, building and repairing of all sewers, whether such improvements are made by contractors or by the city directly; and, under a contract for the improvement of a street, the city retains the right to direct or control the work and to discharge all persons employed thereon who should neglect or refuse to obey the city engineer, the contractor is not an independent one, within the meaning of the rule which exempts a city from liability for an injury caused by negligence in the prosecution of the work, but the city stands in the position of respondeat superior: *Cooper v. City of Seattle*, 16 Wash. 462, 58 Am. St. Rep. 46, 47 Pac. 887.

Limit of indebtedness.—When a municipality has reached the limit of its indebtedness, there can be no general liability contracted or established on account of the expense of street improvements: *German-American Savings Bank v. City of Spokane*, 17 Wash. 315, 47 Pac. 1103, 49 Pac. 542.

General liability for special assessments.—Where the cost of a street improvement is to be paid out of a special fund raised by the city from assessments upon the property benefited, there can be no recovery against the city for failure to cause such fund to be raised, as long as the assessment plan can be enforced in any way, although the city may have expressly contracted that it would proceed with the collection of the assessments in the shortest time possible (*McEwan v. Spokane*, 16 Wash. 212, 47 Pac. 433, overruled): *Id.*

Where there is no power in a municipality to construct street improvements out of the general fund, it cannot be made liable for a failure to provide a special fund. Holders of warrants drawn by a city upon a special street improvement fund may compel the city officers to proceed diligently to collect the assessments from which the fund is to be raised, notwithstanding the city council may have provided for payment of the assessments in installments extending over a period of years: *Id.*

Under charter provisions requiring that the entire expense of the improvement,

where land is appropriated for the widening of a street, should be assessed upon the property benefited, the city cannot be made liable to pay condemnation awards, if it has not actually collected the money due upon the assessments, at least until after it has been fully moved to prosecute the collection of the assessments and has failed and the further right to enforce collection has become lost. The fact that judgments for damages by reason of the appropriation of land had been awarded against the city in certain condemnation proceedings would not estop the city from questioning the right of another claimant to judgment under similar circumstances. Where a motion for judgment upon an award in condemnation proceedings for the appropriation of land for widening a street is sought against the city, the latter may, as a defense, set up the abandonment of the improvement scheme. Upon an appeal from a judgment in an action to enforce a condemnation award, the absence from record of the assessment-roll is immaterial, although it may have been in evidence in the court below: *Seavey v. City of Seattle*, 17 Wash. 365, 49 Pac. 517.

A tax will not be deemed oppressive and unreasonable, so as to constitute confiscation rather than taxation of property, merely from the amount of tax levied, since every presumption is in favor of its validity. An ordinance providing for the licensing of auctioneers and providing for different license fees for the sale of different kinds of goods is not objectionable on the ground of being ununiform as to class, since it is within the discretion of the city council to classify single kinds of business in accordance with the different character and kind of property sold and graduate the license tax thereon: *Stull v. De Mattos*, 23 Wash. 71, 62 Pac. 451.

Assessments for local improvements—Powers respecting.—The power of cities to make assessments for local improvements payable in installments, without the issuance of bonds, is conferred by Ballinger's Code, section 739 (1 Hill's Code, § 520), which authorizes cities to provide for the manner of collecting such assessments: *Heath v. McCrea*, 20 Wash. 342, 55 Pac. 432.

Power to License.—Cities have power to impose a license tax upon all business houses within the corporate limits which employ trading stamps for the sale of

goods: *Fleetwood v. Read*, 21 Wash. 547, 58 Pac. 665.

Section 2934 of Ballinger's Code was impliedly repealed by the later enactment of the statute empowering cities of the first class to frame their own charters, wherein it is provided by Ballinger's Code, section 739, subdivisions 32-34, that such cities have power to regulate the selling or giving away of intoxicating liquors; to grant licenses for any lawful purpose, and to fix by ordinance the amount to be paid therefor, and to provide for revoking the same; and to regulate the carrying on within its corporate limits of all occupations, which are of such a nature as to affect the public health or the good order of said city, or to disturb the public peace, and which are not prohibited by law: *Seattle v. Clark*, 28 Wash. 717, 69 Pac. 407.

A charter amendment fixing the amount to be charged for liquor licenses is valid, although Ballinger's Code, section 739, subdivision 33, provides that cities of the first class shall have power to grant licenses, "and to fix by ordinance the amount to be paid therefor," since such subdivision must be construed as directory, in view of the fact that the same act provides (section 742, Id.) that it shall

be liberally construed; that the city may provide a charter for its own government and may provide for voting upon questions to be submitted; and that the legislative intent to give such cities full power to regulate the sale of intoxicating liquors is apparent from the grant of power contained in Ballinger's Code, section 739, subdivisions 32-34, the only restrictions imposed being that licenses shall not be for a longer period than one year, nor granted to any person who shall not first comply with the general laws of the state in force at the time: Id.

§ 740. **Cities of first class — Officers' salaries must be fixed by charter.**—Salary warrants issued by the city of Tacoma in pursuance of an ordinance of the city council fixing salaries, under the provisions of the freeholders' charter of 1890, delegating such power to the city council, are illegal, since the act enabling the city to frame its own charter required that the salary of elective officers be provided for in the charter itself: *Bardsley v. Sternberg*, 17 Wash. 243, 49 Pac. 499.

§ 744. **A grant of jurisdiction over a certain subject matter to one court does not of itself imply that such grant of jurisdiction is to be exclusive:** *State v. Considine*, 16 Wash. 358, 47 Pac. 755.

§ 759a. **Justices' Courts in Cities of First Class.**

Each incorporated city of the first class in this state, together with any adjoining precincts, if any there are, lying partly within and partly without said city, shall for the purposes of this act, and for fixing and limiting the number of justices of the peace to be elected in such city, be deemed and considered one precinct, and the qualified electors within the limits thereof shall, at each general election vote for and elect two justices of the peace, who shall be attorneys at law, duly admitted to practice in the supreme court of the state, and one constable.

One Justice to be Police Judge; Mayor to Select.

Within ten days after such election the mayor of the city shall appoint one of the justices so elected the police justice or police judge of such city, who shall before entering upon the duties of his office as police judge, give such additional bond for the faithful performance of his duties as the city council may by ordinance direct. [Approved Mar. 13, 1899; L. 1899, p. 135.]

Jurisdiction of Police Judge.

The police judge so appointed, in addition to his powers as justice of the peace, shall have exclusive jurisdiction over all offenses defined by any ordinance of the city, and all other actions brought to enforce or recover any license, penalty or forfeiture declared or given by any such ordinance, and full power to forfeit bail bonds and issue execution thereon and full power to forfeit cash bail, and full power and authority to hear and determine all causes, civil or criminal, arising under such ordinance, and pronounce judgment in accordance

therewith: Provided, That for the violation of a criminal ordinance no greater punishment shall be imposed than a fine of one hundred dollars, or imprisonment not to exceed thirty days, or by both such fine and imprisonment. In the trial of actions brought for the violation of any city ordinance, no jury shall be allowed. All civil or criminal proceedings before such police judge and judgments rendered by him shall be subject to review in the superior court of the proper county by writ of review or appeal. [Amendment of 1903; L. 1903, p. 34, § 1.]

Process of, in Name of State.

All criminal process issued by such police judge shall be in the name of the state of Washington and run throughout the state, be directed to the chief of police, marshal, or other police officer of any city or to any sheriff or constable in the state and shall be served by him.

City to be Named as Plaintiff.

All prosecutions for the violation of any city ordinance shall be conducted in the name of the city, and may be upon the complaint of any person. [Approved Mar. 13, 1899; L. 1899, p. 135.]

Clerk for Police Judge.

The police judge of such city shall have power at any time to appoint a clerk to assist such police judge in clerical work incidental to the performance of his duties, who shall be paid such salary out of the funds of the city as the city council may by ordinance determine.

That an emergency is declared to exist and this act shall be in force from and after its passage and approval. [Amendment of 1903; L. 1903, p. 75, § 2.]

Salary of Police Judge.

The salary of such police judge to be paid in addition to the salary paid to justices of the peace in cities of the first class, shall be fixed by the city council by ordinance and such additional salary shall be paid wholly out of the fund of the city, in equal monthly installments. The city shall provide a suitable place for holding court by such police judge, and pay all the expense of maintaining the same.

Costs in Police Court.

In all civil and criminal cases arising from the violations of city ordinances tried by such police judge he shall charge up as costs in each case the same fees as are charged by justices of the peace for like services in every action, and all fees so charged and collected by, and all fines and forfeitures paid to, such police judge shall belong to and be paid over by him weekly, to the city.

Conduct of Cases in Police Court.

Such police judge shall in the conduct of the business of the court give preferences to cases arising under ordinances of the city; then to prosecutions for violation of the criminal laws of the state of Washington within the city; then to civil causes coming before him upon change of venue from the other justice of the peace in the city. No change of venue shall be allowed from such police judge in actions brought for violations of city ordinances.

Appointment of Justice in City.

Within five days after the passage of this act the board of county commissioners of the county wherein any such city is located, shall appoint a competent attorney at law residing in such city, who has been duly admitted to practice in the supreme court of the state, to be a justice of the peace of such precinct, and to hold office until his successor has been duly elected and qualified. And within five days after such appointee shall have qualified as required by law, the mayor of any such city shall appoint one of the justices of such precinct the police judge of such city as in this act provided.

Pro Tempore Police Judge.

In case of the temporary absence or inability of the police judge to act the mayor shall appoint, from among the practicing attorneys qualified electors of the city, a police judge pro tempore, who, before entering upon the duties as such, shall take and subscribe an oath as other judicial officers, and while so acting he shall have all the powers of the police judge: Provided, however, Such appointment shall not continue for a longer period than the absence or disability of the police judge. Such police judge pro tempore to receive compensation at the rate of five dollars a day to be paid by the city. [Approved Mar. 13, 1899; L. 1899, p. 135.]

§ 763a. Amendments of City Charters.

On petition of a number (equal to fifteen per cent of the total number of votes cast at the last preceding municipal election) of qualified voters of any municipality having adopted a charter under the laws of this state, asking the adoption of a specified charter amendment, providing for any matter within the realm of local affairs, or municipal business, the said amendment shall be submitted to the voters at the next regular municipal election, occurring thirty days or more after said petition is filed, and if approved by a majority of the local electors of the municipality voting upon it, such amendment shall become a part of the charter organic law governing such municipality.

The petition containing the demand for the submission of the proposed charter amendment shall be filed with the city clerk, and each signer shall write his occupation and residence after his signature, and the genuineness of the signatures on such paper must be attested by the affidavit of a qualified voter.

This act shall not be construed to deprive city councils from submitting proposed charter amendments to the voters as is now provided, but shall be held to afford a concurrent and additional method for proposing and submitting amendments to the charter of any municipality having a charter. [Approved Mar. 21, 1903; L. 1903, p. 393.]

§ 793. Special Assessments, Payment of—Cities First Class.

When such ordinance under which said improvement shall be ordered shall provide that such improvement shall be paid for in whole or in part by special assessment or special taxation of property benefited thereby, the damage and

costs awarded, or such part thereof as is to be paid from special taxation or special assessment, shall be levied, assessed and collected in the manner hereinafter provided. [Amendment, approved Mar. 16, 1903; L. 1903, p. 241, § 1.]

§ 802. Eminent Domain by Cities of First Class—Hearing upon Commissioner's Report—Evidence.

On the hearing the report of such commissioners shall be competent evidence, and either party may introduce such other evidence as may tend to establish the right of the matter. The hearing shall be conducted as in other cases at law, tried by the court without a jury, and if it shall appear that the premises of the objector are assessed more or less than they will be benefited, or more or less than their proportionate share of the costs of the improvement, the court shall so find, and also find the amount in which said premises ought to be assessed, and the judgment shall be entered accordingly.

An emergency exists and this act shall take effect immediately. [Amendment, approved Mar. 16, 1903; L. 1903, p. 241, § 2.]

§ 828. Collection of Assessments.

Any city of the first class having the authority to provide for making local improvements and to levy and collect special assessments on property benefited thereby, and for paying for the same or any portion thereof; and to determine what work shall be done or improvements made at the expense, in whole or in part, of the owners of the adjoining, contiguous or proximate property, or others specially benefited thereby, and to provide for the manner of making and collecting assessments therefor, may exercise such authority by general or special ordinance or by general and special ordinance jointly.

The city council or other legislative body of such city ordering the making of a local improvement at the expense, in whole or in part, of the owners of property benefited, may ordain whether payment is to be made in one sum or by installments, and levy assessment upon the property benefited for its part, or the whole of the cost as the case may be.

Priority of Liens for Assessments.

Such assessment shall be a lien upon the property assessed from the time when the assessment is levied, which lien shall be paramount and superior to any other lien heretofore or thereafter created, whether by mortgage or otherwise, except a lien for prior assessment and for general taxes, and shall be payable at such time, and when delinquent, shall bear such interest and penalty as the city may by ordinance prescribe.

Validity of Assessments—When and How Contested.

The regularity or validity of said assessment cannot in any manner be contested or questioned by any proceeding whatsoever by any person not filing objection to such assessment roll prior to the same being confirmed.

The decision of the legislative body upon any objection may be reviewed by the superior court in the manner prescribed by law.

Collection by Action at Law.

Any city of the first class may sell benefited property upon which assessments are not paid, or may enforce the lien for such assessment by civil action in like manner and with like effect as actions for the foreclosure of mortgages.

Warrants for Improvements.

In payment to the contractor of such part of the improvement as is to be paid for by the property benefited, cities may issue warrants from time to time as the work progresses upon the special improvement fund, which shall bear interest at the rate of not more than ten per cent per annum from date of delinquency of the assessment, and these warrants may be accepted in payment of assessments payable into the same fund as that upon which the warrants are drawn; but either by indorsement or on the face it shall be made known that the city is not liable on them out of its general fund. When practicable such warrants may be made to correspond in amount with the assessment against each parcel of land. In payment for such part of the improvement as is to be borne by the city, if any, warrants may be drawn upon such fund as the city shall by ordinance direct.

Application of Provisions of Act.

Cities of the first class shall by ordinance prescribe the method by which this act shall be put into operation, and any provisions herein which may be made applicable to existing delinquent assessments may be extended by ordinance to them.

The provisions of this act may be by ordinance extended to reassessments.

Second Sale for Subsequent Installments.

Where property is assessed in installments the sale of the property to pay any particular installment shall not prevent a subsequent sale to pay any unpaid installment when the same shall become due, but such subsequent installment shall be collected in the manner provided by ordinance.

How Act to be Construed as to Other Provisions of Law.

This act shall not prevent or be construed to prohibit the collection of street improvement assessments in any manner now or hereafter provided by charter or ordinance of any city, but any city may pursue the means now or hereafter provided by charter, or may, at its option, follow the provisions of this act, and this act shall not be construed as repealing any existing charter provision, but shall be a concurrent remedy.

An emergency is hereby declared to exist, and this act shall take effect immediately. [Approved Mar. 18, 1899; L. 1899, p. 334.]

§ 828. Under the laws of this state, which authorize cities to make local improvements and pay therefor by assessment upon the property specially benefited, and under Laws 1899, page 234, which recognizes the laying of a water main to be a local improvement in the same class as the grading of a street, the city of Seattle has power, under its charter passed in conformity to such general laws, to create a local assessment district for the purpose of laying a water main,

and charge the cost thereof against property owners according to benefits to their real property in such district: *Smith v. Seattle*, 25 Wash. 300, 65 Pac. 612.

Laws 1899, page 234, which authorizes the issuance and sale of bonds by cities to pay for local improvements is applicable to the city of Seattle by way of amendment to the powers conferred by the general incorporation law under which it

had been incorporated; and under that act and the provision of the Seattle charter adopted pursuant thereto (Seattle charter, art. 8, § 11, subd. 1), which recognizes water mains as in the nature of local improvements, the city of Seattle has power to provide for the payment of the expense of laying water mains by the issuance of local improvement bonds: *Id.*

§ 838. Drainage and Sewerage—Power to Provide for.

Any city of the first class is hereby empowered to provide for the sewerage and drainage of such city; with full power to establish, construct and maintain a system, or systems, therefor; and shall have full jurisdiction and authority to manage, regulate and control the same. It may establish sewer or drainage districts in conformity to the requirements of the topography of the ground; and construct in each of said districts a main or trunk sewer; and such district shall include real estate which can be conveniently sewered or drained into such main or trunk sewer, and which will be benefited thereby. It may provide for the payment for such sewer by a special tax, or by special assessments upon the land included in such district excluding all improvements thereon, whether the same be affixed to the land or not. The city may, from time to time, establish in connection with such main or trunk sewer, subsewer districts, and construct and maintain in such districts a subsewer, connecting and draining, directly or indirectly, into such main or trunk sewer. Such subsewer district shall include all real estate which can be conveniently drained or sewered by the subsewer constructed therein, and which will be benefited thereby, and it may provide for the cost of establishing and constructing such subsewer by a tax upon all the real property in such subsewer district, or by special assessments upon the land included in, and which will be benefited thereby, excluding all improvements thereon, whether the same be affixed to the land or not. The boundaries of such sewer and subsewer districts shall be established and fixed by ordinance. Maps, plans and specifications for any main or trunk sewer, and for any subsewer, shall be prepared in such manner as said city may by charter or ordinance prescribe; but shall be adopted by ordinance before any assessment or tax to pay for such sewer or subsewer shall be levied.

Mode of Charging Cost to Property by General Ordinance.

Such cities may prescribe by general ordinance the mode and manner in which the charge upon the property in the sewer or subsewer district shall be assessed and determined for the purpose of paying the cost and expense of establishing and constructing such sewer or subsewers: Provided, however, That there shall be, in all cities, a provision for a hearing upon objections to the assessment roll by the parties affected before the council or other legislative body as a board of equalization, which hearing shall be after publication of reasonable notice thereof, such notice to be published in such manner and for such time as may be prescribed by ordinance. Such charge shall be a lien paramount to all other liens, except liens for assessments and taxes, upon the

property assessed from the time the assessment roll shall be placed in the hands of the collector. All sewer taxes and assessments levied upon property of the United States, state of Washington, state university, county and school districts and of the city (except streets, avenues, public ways and alleys, which shall not be assessed) shall be paid by the city out of the general fund.

Time for Payment to be Fixed by Ordinance.

Such city shall prescribe by ordinance within what time or times such taxes, assessments or installments thereof shall be paid, and may provide for the payment and collection of interest at a rate not to exceed eight per cent per annum upon all unpaid installments. Such city may prescribe by general ordinance in what manner and to whom such assessments and installments shall be paid, and for the giving of notice of publication for a reasonable time in the official newspaper that the assessment roll is in the hands of the collector, that the taxes or assessments are payable, and the date when the same become delinquent. Such notice shall be a sufficient demand for payment, and it shall be the duty of any person whose property is taxed or assessed for improvements, as herein provided, to pay such tax or assessment before the same becomes delinquent. Taxes, assessments or installments thereof shall, when delinquent, bear such interest and penalty as may by ordinance be prescribed, and such penalty and interest shall be added to and become a part of the assessment lien. Delinquent taxes or assessments shall be enforced and the lien thereof foreclosed in such manner as the city may by ordinance prescribe, and cities of the first class are hereby authorized and empowered to provide for the sale of lands upon which there are delinquent sewer taxes or assessments for the amount of such taxes, assessments, penalties, interest and cost as may be due, upon reasonable published notice (the time of publication and manner of such notice to be prescribed by general ordinance) the execution and delivery of certificate of sale to the purchaser, and the time, manner and costs of redemption: Provided, That said time shall not be less than one year from date of sale; the execution and delivery of tax or assessment deeds; and may, so far as consistent with the laws and constitution of Washington and of the United States, prescribe the effect of such deeds as prima facie and conclusive evidence of the validity and regularity of the improvement and tax or assessment proceedings culminating in the issuance of such deeds. Such city may provide for the bringing of suits in court in the name of the city to enforce the collection of such taxes or assessments, and the foreclosure of such tax and assessment liens, and for the recovery of costs. In such proceedings; all owners of property upon which there are delinquent taxes, assessments or installments thereof, arising under a single roll may be joined as defendants, and all liens for such taxes or assessments may be foreclosed in such action. In such proceedings, it shall be sufficient to allege the passage of the tax or assessment ordinance, the levy of the tax or assessment, the confirmation thereof, and the failure to pay within the time prescribed. The tax or assessment roll and order of confirmation, or authenticated copies thereof, shall be prima facie evidence of the regularity and validity of the proceedings connected therewith, and the burden of proof shall be upon the

defendants. The decree in such proceedings shall be for the amount due and costs, and for the sale of the land therefor. Such city may provide for the issuance of delinquent tax or assessment certificates for any and all delinquent taxes, assessments, or installments thereof, levied or assessed for the payment of the cost of sewers or subsewers, and may provide that such certificates shall bear interest at the prescribed rate, not to exceed fifteen per cent per annum from the date of issuance, and such certificates shall constitute a lien upon the premises against which the same are issued for the amount of the delinquent tax or assessment and costs. It may provide that such certificates may be foreclosed in the same manner and with the same effect as mortgages upon real estate are foreclosed, or as delinquent tax certificates are foreclosed. It may make such certificates assignable in writing, may guarantee them in whole or in part, and prescribe the time, manner and terms in and upon which the land may be redeemed. Such certificates shall be prima facie evidence that the land against which the same were issued was subject to the tax or assessment; that the tax or assessments were properly and regularly levied or assessed, and that the tax or assessment, or installment thereof, for which the certificate was issued was not paid prior to the issuance thereof. The city may prescribe any other means for the enforcement of the payment of delinquent sewer taxes or assessments, or installments thereof, and the foreclosure of the tax or assessment lien, not forbidden by law. Such city may provide that, at the sale of lands for delinquent sewer taxes or assessments, or installments thereof, the lands shall be struck off to it, if there be no bidder therefor of the amount of the delinquent tax or assessment, penalties, interest and costs, and that the certificates of sale and tax or assessment deeds shall be issued and delivered to it, in its name, as purchaser, and may provide for the issuance to itself of all or any of the delinquent tax or assessment certificates, either at the date of delinquency or after a fixed period, and may foreclose the same in its own name: Provided, however, That any and all property which such city may acquire through proceedings for the collection of delinquent sewer taxes or assessments, or installments thereof, or the foreclosure of the liens thereof, shall be held in trust for the fund for the creation of which such tax or assessment was levied or assessed; and the city shall provide for the execution of such trust in such manner as may be equitable: Provided, further, That such city shall not be liable for any sewer or subsewer tax or assessment fund, or for any claims or demands whatsoever against such fund except as trustee therefor; and the holders or owners of any claims or demands against such tax or assessment fund shall look only to such fund for the payment thereof, and shall have no claim against said city therefor, except from such fund. The moneys collected or received upon taxes or assessments for sewers or subsewers shall be kept as a separate fund and shall be solely for the purposes for which fund was created.

Bonds may be Issued for Cost of Sewers.

For the purpose of the payment of the cost of such sewers or subsewers, such cities may, by ordinance, authorize the issuance of interest bearing bonds or war-

rants of the sewer or subsewer district, which shall include the property liable to assessment for the payment of the cost of such sewer or subsewer; and taxes or assessments may be levied and collected as hereinbefore provided for the purpose of paying and retiring such bonds or warrants, together with interest accruing thereon. Such bonds or warrants may be issued and disposed of for such purpose in such manner as may be by law, charter or ordinance prescribed: Provided, however, That such bonds or warrants shall not be disposed of for less than par and accrued interest. Such bonds shall be made payable on or before a date not to exceed ten years from and after their date, and may be issued subject to call. They shall bear such interest as may be prescribed, not to exceed eight per cent per annum, which interest shall be payable annually or semi-annually as prescribed by ordinance. Such bonds or warrants shall be payable only from the funds created by the special taxes or assessments, hereinbefore authorized, upon the property in the sewer or subsewer district; and the holder of such bonds or warrants shall look only to such fund for the payment of the principal and interest thereof, and shall have no claim or lien therefor against the city by which the same is issued, except from such fund.

Provisions of Act Cumulative.

The provisions and remedies provided by this act are and shall be cumulative of existing provisions and remedies, and nothing in this act contained shall be held to repeal any provision of the existing law or of any charter of any city upon the subject matter thereof, but such existing law or charter provision shall continue in full force and effect, and it shall be optional with the city authorities to proceed under either such existing law, charter provision or this act. [Approved Mar. 16, 1901; L. 1901, p. 150.]

§ 927. Election of Officer of Cities of Third Class.

The mayor, members of the city council, treasurer, health officer, clerk and city attorney shall be elected by the qualified electors of said city at a general municipal election to be held therein, on the first Tuesday after the first Monday in December in each year. The mayor, councilman at large, treasurer, health officer, clerk and city attorney shall hold office for the period of one year from and after the first Tuesday in January next succeeding the day of such election, and until their successors are elected and qualified. Members of the city council, other than councilman at large, shall hold office for the period of two years from and after the first Tuesday in January next succeeding the day of such election, and until their successors are elected and qualified: Provided, That the first city council elected under the provisions of this act shall, at their first meeting, so classify themselves by lot as that three of their number shall go out of office at the expiration of one year and three at the expiration of two years. A marshal and police justice and such number of policemen as the council may provide by ordinance, shall be appointed by the mayor, and they shall hold office for the period of one year from and after the first Tuesday in January next succeeding the general municipal election and until their successors are appointed and qualified, unless sooner removed by the mayor by and with

the consent of not less than four councilmen. The city council may, by ordinance, provide for the appointment by the mayor, of a pound-master, and a city engineer who shall hold office during the pleasure of the mayor, and the city council may also by ordinance provide for the appointment by the mayor of the following employees: Street superintendent, water superintendent and auditor, whose employment shall continue during the pleasure of the mayor. [Amendment, approved Mar. 16, 1903; L. 1903, p. 200.]

§ 929. Vacancy in Offices of Cities, How Filled:

Any vacancy occurring in any of the offices provided for in this act shall be filled by appointment by the mayor, but if such office be elective, such appointee shall hold office only until the next regular election, at which time a person shall be elected to serve for the remainder of such unexpired term. In case a member of the city council shall absent himself for three consecutive regular meetings thereof, unless by permission of the city council, his office shall be declared vacant by the city council and all vacancies in the city council shall be filled by a majority vote of such city council. [Amendment, approved Mar. 16, 1903; L. 1903, p. 201.]

§ 935. Quorum—Passage of Ordinances.

At any meeting of the city council a majority of the councilmen shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time and may compel the attendance of absent members in such manner and under such penalties as may be prescribed by ordinance. The mayor shall preside at all meetings of the council, and in case of his absence the council may appoint a mayor pro tem., and in case of the absence of the clerk the mayor or mayor pro tem. shall appoint one of the members of the city council as clerk pro tem., but the appointment of a councilman as mayor pro tem., or as clerk pro tem., shall not in any way abridge his right to vote upon all questions coming before such council. Every ordinance which shall have passed the city council shall be, before it becomes valid, presented to the mayor; if he approves he shall sign it, but if not he shall return it, with his written objections to the city council and the council shall cause such written objections to be entered at large upon the journal of its proceedings. Upon receipt of the mayor's objections the council shall proceed to reconsider the vote by which the ordinance was passed. After such reconsideration, five members of the city council present and voting may, by an affirmative vote, pass the ordinance over the mayor's vote; such vote shall be taken by a call of the yeas and nays. If the mayor shall fail, for the period of ten days, to approve or veto an ordinance, it shall become valid without his approval.

All appointments of officers and employees made by virtue of this act, shall be subject to confirmation by the city council. Final action on any appointment shall be taken by the city council not later than the second regular meeting after the submission of the same by the mayor to the city council: Provided, however, That failure by the city council to take such action on any appointment made by the mayor, within the time aforesaid, shall be deemed a

confirmation. If the city council shall refuse to confirm any appointment of the mayor, then he shall at or before the next meeting of the council thereafter, appoint another person to fill the office or position, and he may continue to appoint until his appointment is confirmed. In case the mayor fails to make another appointment within one week from the rejection of the appointment for the same office or position, then the city council may elect a suitable person to fill the office or position during the term. [Amendment, approved Mar. 16, 1903; L. 1903, p. 203.]

§ 936. Ordinances Granting Franchises.

No ordinance and no resolution granting any franchise for any purpose shall be passed by the city council on the day of its introduction, nor within five days thereafter, nor at any other than a regular meeting, nor without being first submitted to the city attorney. All ordinances shall be published in a newspaper printed within said city, said publication shall be made by the newspaper designated as the official newspaper of said city, if there be one. If there be no official newspaper nor other newspaper published in said city, then publication shall be made in such manner as the city council may direct. No franchise or valuable privilege shall be granted unless by the vote of at least five members of the city council. No ordinance and no resolution or order shall have any validity or effect, unless passed by the votes of at least four councilmen. No ordinance shall take effect until five days from and after the date of its publication. No ordinance shall contain more than one subject, which shall be clearly expressed in its title. No ordinance or any section thereof shall be revised or amended unless the new ordinance contain the entire ordinance or section revised or amended, and the ordinance or section so amended shall be repealed.

All acts and parts of acts in conflict with this act are hereby repealed. [Amendment, approved Mar. 16, 1903; L. 1903, p. 204.]

§ 943. Assessments for Local Improvements.

The city council are hereby authorized and empowered to order any work authorized by this chapter to be done upon the streets, alleys, avenues, highways and public places of such city. The expense or cost of improving and repairing streets, sidewalks, alleys, squares or other public highways and places within the city, removing obstructions therefrom, grading, planking, paving, macadamizing, graveling and curbing the same and planting, setting out and cultivating of shade trees therein, and constructing gutters, culverts and sidewalks therein, shall be assessed as follows: The city council shall before grading, paving or other improvement of any street or alley, the cost of which is to be levied and assessed upon the property benefited, first pass a resolution or ordinance declaring its intention to make such improvement and stating in such resolution or ordinance the name of the street or alley to be improved, the points between which the said improvement is made, and the estimate of the cost of the same, and the cost of the same is to be assessed against the property abutting (and included in the assessment district herein provided) on such street proposed to be

improved, and shall fix a time not less than ten days in which protests against such proposed improvement may be filed in the office of the city clerk. It shall be the duty of such clerk to cause such resolution to be published in the official newspaper of the city in at least two consecutive issues before the time fixed in such resolution for filing such protest, and affidavit of such publication shall be filed on or before the time fixed for such filing. If protest against the proposed improvement by the owners of more than two-thirds of the front feet of lots and lands abutting on such proposed improvement and included in the assessment district therein proposed, be fixed [filed] on or before the date fixed for such filing, the council shall not proceed further with the work unless six members of said council shall vote to proceed with such work. If no such protest is filed, or if such protest is filed and six councilmen shall vote to proceed with such work, the council shall at its next regular meeting, proceed to consider the same, and shall then or at a subsequent time proceed to enact an ordinance for such improvement.' By the provisions of such ordinance a local improvement district shall be established to be called "Local Improvement District No. ——" which shall include all the property fronting on the street to be improved between the points named in such resolution, to the distance back from such street, if platted in blocks and lots, 120 feet provided the block is 240 feet or more in length and if less than 240 feet in length then to the center of the block; if platted only in blocks to the center of each block; and if not platted, to the distance of one hundred and twenty feet. Such ordinance shall provide that such improvement shall be made, and that the cost and expense thereof shall be taxed and assessed upon all the property in such local improvement district, which cost shall be assessed in proportion to the number of feet of such land and lots fronting thereon, and included in said improvement district, and in proportion to the benefits derived by said improvement: Provided, That the city council may expend from the general fund for such purposes such sums as in their judgment may be fair and equitable in consideration of benefits accruing to the general public by reason of such improvements. The expense of all the improvements in the space formed by the junction of two or more streets, or where one main street terminates in or crosses another main street, and also all necessary street crossing or crossings at corners or intersections of streets, and the expenses of establishing, building and repairing bridges in such city shall be paid by such city, the expenses incurred in making and repairing sewers, in any street shall be paid by special assessment levied against the property benefited thereby. In all the streets constituting the water front of such city, or bounded on the one side by the property thereof, the expense of work done on that portion of said streets, from the center line thereof to the said water front, or to such property of the city bounded thereon, shall be paid for by such city; but no contract for any such work shall be given except to the lowest responsible bidder, and in the manner hereinafter provided. When any work or improvements mentioned in this section is done or made on one side of the center lines of such streets, avenues or public ways, the lot or portion lots fronting on that side only shall be assessed to cover the expenses of said work, according to the provisions of this chapter. Whenever any expenses or

costs of work shall have been assessed on any lands, the amount of said expenses shall become a lien upon said lands, which shall take precedence of all other liens, except general tax liens, and which may be foreclosed in accordance with the provisions of the Code of Civil Procedure. Said suit shall be in the name of the city of _____ (naming it) as plaintiff. And in any such proceedings where the court trying the same shall be satisfied that the work has been done or material furnished, which according to the true intent of the act would be properly chargeable upon a lot or land through or by which the street, alley or highway improved or repaired may pass, a recovery shall be permitted or charge enforced to the extent of the proper proportion of the value of the work or material which would be chargeable on such lot or land notwithstanding any informalities, irregularities or defects in any of the proceedings of such municipal corporation or its officers. [Amended by act of 1901, p. 229; Amendment, approved Mar. 16, 1903; L. 1903, p. 231, § 1.]

§ 945. Assessments—Action to foreclose lien of.—A city of the third class has legal capacity to sue, and a right to maintain an action to foreclose the lien of taxes, under the power granted by Ballinger's Code, section 945, which provides that all taxes shall constitute liens on the property assessed, which may be enforced by actions in any court of competent jurisdiction to foreclose such liens: *Port Townsend v. Eisenbeis*, 28 Wash. 533, 68 Pac. 1045.

Where a city was entitled under its special charter to have a lien upon real property until taxes assessed thereon should be paid, with power to enforce collection by summary process, it did not lose such rights by reincorporating under general laws which provided (Ballinger's Code, sec. 704) that such reorganization should in no wise affect or impair the city's title to any demands, liabilities or obligations existing in its favor, and that (Ballinger's Code, § 945) all taxes, including those for previous years, might be enforced either by summary sale of the property upon which the

same were liens or by action in court to foreclose such liens; but, under the latter statute, the city acquired the additional right of enforcing its lien for taxes by suit, as well as by summary sale: *Id.*

The general statute of limitations, enacted in 1854, is inapplicable to actions by the city of Port Townsend to foreclose tax liens, when it contains no specific provision in regard to actions of that character, in view of the fact that the grant of a special charter to the city of Port Townsend, enacted by the legislature in 1881, provided that the taxes levied thereunder should have the effect of a judgment, and the judgment should not be satisfied nor the lien removed until the payment of the taxes, and in view of the further fact that the law under which that city subsequently reorganized as a municipal corporation specifically provided that every tax levied should be a lien, which should not be satisfied or removed until the taxes were paid, or the property had absolutely vested in a purchaser by reason of a sale for such taxes: *Id.*

§ 948. Public Works—How Contracted for.

In the erection, improvement and repair of all public buildings and works, in all street and sewer work, and in all work in or about streams, bays or water fronts or in or about embankments, or other works for protection against overflow and in furnishing any supplies or materials for the same, when the expenditure required for the same exceeds the sum of five hundred dollars, the same shall be done by contract and shall be let to the lowest responsible bidder, after due notice, under such regulations as may be prescribed by ordinance: Provided, That the city council may reject all bids presented, and readvertise, in their discretion, or if in the judgment of the council such work can be performed or supplies or materials furnished by the city independent of contract cheaper than under the lowest bid submitted, it may cause such work to be performed or supplies or materials to be furnished independent of contract. The

city council shall annually, at a stated time, contract for doing all city printing and advertising, which contract shall be let to the lowest bidder after notice as provided in this section. All advertising shall be done in a newspaper printed and published in such city, and the contract therefor shall be awarded separately from all the other printing. [Amendment, approved Mar. 4, 1903; L. 1903, p. 33.]

§ 954. Duties of Treasurer.

It shall be the duty of the treasurer to receive and safely keep all moneys which shall come into his hands as such treasurer, for all of which he shall give duplicate receipts, one of which shall be filed with the city clerk. He shall pay out said moneys on warrants signed by the mayor and countersigned by the clerk, and not otherwise. He shall make quarterly settlements with the city clerk, upon which settlement he shall file a statement of his account with said clerk. He shall collect all taxes and assessments levied by the city council, the collection of which is not otherwise provided for, and shall receive from the city clerk all city licenses and collect the same. He shall receive such compensation and shall perform such other duties as the city council may, by ordinance, direct. [Amendment, approved Mar. 13, 1899; L. 1899, p. 177.]

§ 968. Officers of, precluded from interest in contracts, effect of.—The fact that a property owner stood by and allowed the city to improve a street upon which his property abutted, without raising any objection to the letting of the contract, or the levy of the assessment would not estop him in an action to enforce the assessment from setting up the illegality of the contract by reason of the interest of a member of the city council therein, such contract is shorn of all equitable features,

and the duty imposed on the court of declaring the contract void, whenever its illegality appears from the evidence: *Northport v. Northport Town Co.*, 27 Wash. 543, 68 Pac. 204.

The interest of a stockholder of a corporation in corporate contracts brings such stockholder within the reason of the rule prohibiting a city officer from being interested as an individual in the city's business: *Id.*

§ 975. Renewal of Sidewalks.

That whenever any street, lane, square, place or alley in any city of the first, second, third or fourth class now or hereafter legally organized in this state, shall have been improved by the construction of a sidewalk or sidewalks along either or both sides thereof, the duty, burden and expense of maintenance, repairs and renewal of such sidewalk or sidewalks, shall devolve upon the property directly abutting upon that side of such street along which such sidewalk has been constructed as hereinafter provided. Whenever, in the judgment of that officer or department of any such city who or which is or shall be charged with the inspection and care of the sidewalks along the public streets, lanes, squares, places and alleys in such city, the condition of any sidewalk is such as to render the same unfit or unsafe for purposes of public travel, the said officer or department shall thereupon notify the owner of the property immediately abutting upon said portion of said sidewalk of the condition thereof, instructing the said owner to clean, repair or renew the said portion of said street or sidewalk. Said notice shall specify a reasonable time within which such cleaning, repairs or renewals shall be executed by the said owner, and in

case the said owner shall fail to comply with the instructions of said notice within the time therein specified, then the said officer or department shall proceed to clean said walk or to make such repairs or renewal forthwith, and shall charge the full cost thereof to the said owner of abutting property, which said charge shall become a lien upon said property and shall be collected by due process of law. For the purposes of this act all property having a frontage upon that side or margin of any street shall be deemed to be abutting property, and such property shall be chargeable, as provided by this act, for all costs of maintenance, repairs or renewal of any form of sidewalk improvement between the said street margin and the roadway lying in front of and adjacent to said property, and the term sidewalk is [as] intended for the purposes of this act, shall be taken to include any and all structures or forms of street improvement included in the space between the street margin and the roadway. [Amendment, approved Mar. 13, 1899; L. 1899, p. 112.]

§ 996. Cities of Fourth Class—Officers of.

The government of such town shall be vested in a mayor and council, to consist of five members, a clerk, a treasurer, a marshal who shall be ex-officio tax and license collector, a police justice who may be one of the justices of the peace of the precinct in which said town is situated; and such subordinate officers as are hereinafter provided for. [Amendment, approved Mar. 16, 1903; L. 1903, p. 201.]

§ 997. Elected and Appointed, When—Terms of Office.

The mayor, members of the council and the treasurer shall be elected by the qualified electors of said town at a general municipal election to be held therein on the first Tuesday after the first Monday in December in each year. The treasurer shall hold office for the period of one year from and after the second Tuesday in January next succeeding the day of such election, and until his successor is elected and qualified. The mayor and members of the council shall hold office for the period of two years from and after the second Tuesday in January next succeeding the day of such election, and until their successors are elected and qualified: Provided, That the first council elected under the provisions of this act shall, at their first meeting, so classify themselves by lot as that three of their number shall go out of office at the expiration of one year and two at the expiration of two years. The mayor shall appoint a marshal and clerk. The city council may provide by ordinance for the appointment by the mayor of an attorney, pound-master, a superintendent of streets and civil engineer, and such police and other subordinate officers as in the judgment of the city council may be deemed necessary, and may by ordinance fix their compensation, which said officers shall hold office during the pleasure of the mayor. [Amendment, approved Mar. 16, 1903; L. 1903, p. 201.]

§ 999. Vacancies, How Filled.

Any vacancy occurring in any of the offices provided for in this act shall be filled by appointment by the mayor; but if such office be elective, such ap-

pointee shall hold office only until the next regular election, at which time a person shall be elected to serve for the remainder of said unexpired term. In case a member of the council is absent from town for three consecutive meetings, unless by permission of the council, his office shall by the council be declared vacant, and all vacancies in the council shall be filled by a majority vote of said council. [Amendment, approved Mar. 16, 1903; L. 1903, p. 202.]

§ 1011. Cities of Fourth Class—General Powers.

Cities of the fourth class are hereby given the power to establish fire limits with proper regulations; to acquire by purchase or otherwise, lands for public parks within or without the limits of such city, and to improve the same; Provided, however, That no sum shall be appropriated for that purpose until the same is authorized by a vote of two-thirds of the qualified voters residing in such city, at the annual municipal election, or at a special election held for that purpose, which election shall be held as other special elections.

An emergency exists and this act shall take effect immediately. [Approved Mar. 13, 1899; L. 1899, p. 168, § 1.]

Licensing Bicycles—Regulation of Use of.

All cities of the first, second, third and fourth classes in this state are hereby empowered and authorized to regulate and license the riding of bicycles and other similar vehicles upon and along the streets, alleys, highways or other public grounds within their respective corporate limits and to construct and maintain bicycle paths or roadways within the corporate limits of such cities, respectively, or outside of any [and] beyond such corporate limits leading to or from such cities, respectively.

It shall be unlawful for any person to ride upon a bicycle or other similar vehicle on the sidewalks of any city of the first, second, third or fourth classes within the limits within which the city council of such city may by ordinance prohibit the riding of the same on sidewalks, and such cities are hereby empowered by ordinance to provide for reasonable fines and penalties to be imposed for the violation of such ordinances.

It shall be unlawful for any person to lead, drive, ride or propel any team, wagon, animal or vehicle other than those hereinbefore named, upon and along any bicycle path heretofore constructed or that may hereafter be constructed, within or without the corporate limits of any city, excepting at suitable crossings to be provided in the construction of such paths. Any person violating the provisions of this section shall be guilty of a misdemeanor.

Cities of the first, second, third and fourth class are hereby authorized and empowered by ordinance to establish and collect reasonable license fees from all persons riding a bicycle or other similar vehicle within their respective corporate limits, and to enforce the payment thereof by reasonable fines and penalties.

The license fee to be paid and the rules regulating the riding of bicycles or other similar vehicles within any city of said classes shall be fixed by ordinance, and the rules regulating the use of such bicycle paths or roadways con-

structed or maintained by them within the corporate limits of such cities under the authority of this act, and the fines and penalties for the violation of such rules shall be fixed by ordinance.

Appropriation of Funds Arising from License.

The city council of each city shall by ordinance provide that the whole amount or any amount not less than seventy-five (75) per centum of all license fees, fines, penalties or other moneys collected under the power hereby conferred, shall be paid into and placed to the credit of a special fund to be known as the "Bicycle and road fund," and the moneys in said fund shall not be transferred to any other fund in such cities, and shall be paid out for the sole purpose of building and maintaining bicycle paths and roadways authorized to be constructed and maintained by this act, or for special policemen, bicycle tags, stationery and other expenses growing out of the regulating and licensing of the riding of bicycles and other vehicles and the construction and maintenance and regulation of the use of bicycle paths and roadways.

An emergency is hereby declared to exist, and this act shall be in force from and after its passage and approval. [Approved Mar. 6, 1899; L. 1899, p. 41.]

Selection of Official Paper.

That any town of the fourth class in the state of Washington may select or designate any daily or weekly newspaper published or of general circulation in such town as the official paper of said town, and all notices published in said paper for the period and in the manner provided by law or the ordinances of said town shall be due and legal notice. [Approved Mar. 16, 1903; L. 1903, p. 227.]

§ 1011. Cities and towns—General powers of.—A municipality, under its general powers to manage and control its streets and to pass ordinances for the good government and welfare of the town, is without power to exact a license fee as a prerequisite to the right to ride bicycles on its streets: *State v. Bruce*, 23 Wash. 777, 63 Pac. 519.

§ 1016. Cities and towns Assessments for street improvements.—Where an assessment for a street improvement must be made in proportion to frontage thereon, and in accordance with the benefits received by the property assessed, an assessment against a tract of forty acres, wholly unplatted and used exclusively for farm purposes, is invalid, when only a portion of the land abuts upon the improvement:

Ryan v. Town of Sumner, 17 Wash. 228, 49 Pac. 487.

In assessing land according to benefits, it is not competent to tax land not fronting on the improvement, or to take into consideration the benefit such portion might derive by improving the street in front of other portions: *Id.*

Work by day's labor—Paying from general fund.—Under General Statutes, section 678, providing for the assessment of property in municipalities of the fourth class for the improvement of streets, there is no restriction against the town's doing the work by day's labor, and paying therefor from its general fund, provided its assessment against abutting property is proportioned to the benefits received by such property: *Town of Tumwater v. Pix*, 18 Wash. 153, 51 Pac. 353.

§ 1019. Public Work to be Done by Contract—Notice.

In the erection, improvement and repair of all public buildings and works, in all street and sewer work, and in all work in or about streams, bays or water fronts, or in or about embankments, or other works for protection against overflow, and in furnishing any supplies or materials for the same, when the expenditure required for the same exceeds the sum of one hundred dollars the same shall be done by contract and shall be let to the lowest responsible bidder, after due notice, under such regulations as may be prescribed by ordinance: Provided, That the council may reject all bids presented and re-advertise in their discretion or if in the judgment of the council such work can be performed or supplies or materials furnished by the city independent of contract cheaper than under the lowest bid submitted, it may cause such work to be performed or supplies or materials to be furnished independent of contract. [Amendment, approved Mar. 4, 1903; L. 1903, p. 35.]

§ 1019. Cities and towns—Public work by contract.—A contract by a town to purchase water pipes laid by another party outside of the town limits, at a price in excess of \$2,000, and supply water to such party and other persons without the limits of the town is ultra vires under General Statutes, section 683, which provides that in the erection, improvement and repair of all public works, when the expenditure re-

quired for the same exceeds the sum of \$100, the same shall be done by contract, let to the lowest responsible bidder, and under General Statutes, sections 696, 697, which prohibit a town from contracting for the extension of its water system, whereby an indebtedness is created, without the assent of three-fifths of the voters of the town: State v. Pullman, 23 Wash. 583, 83 Am. St. Rep. 836, 63 Pac. 265.

§ 1076. Cities and Towns—Given Power to Construct and Maintain Waterworks.

That any incorporated city or town within the state be and is hereby authorized to construct, condemn and purchase, purchase, acquire, and to maintain, conduct and operate waterworks within or without its limits for the purpose of furnishing said city or town and the inhabitants thereof, and any other persons with an ample supply of water for all uses and purposes, public and private, including water power or other power derived therefrom, with full power to regulate and control the use, distribution and price thereof; and to construct and maintain systems of sewerage, with full jurisdiction and authority to manage, regulate and control the same, within and without the limits of the corporation; and to construct, condemn and purchase, purchase, acquire, add to, maintain and operate works, plants and facilities for the purpose of furnishing such city or town and the inhabitants thereof and any other persons with gas, electricity and other means, power and facilities for lighting, heating, fuel and power purposes, public and private, with full authority to regulate and control the use, distribution and price thereof; and to authorize the con-

struction of such plant or plants by others for the same purposes, and purchase such power from others, when delivered within such city, for its own use and for the purpose of selling to its inhabitants and other persons doing business within such city, and to regulate and control the use and price of electrical power so supplied, and to construct, condemn and purchase, purchase, acquire, add to, maintain and operate cable, electric or other railways within the corporate limits of such city or town, for the transportation of freight and passengers, with full authority to regulate and control the use and operation thereof, and to fix, alter, regulate and control the fares and rates to be charged thereon, and for the purpose aforesaid, it shall be lawful for any city or town in said state to take and appropriate water from any public or navigable lake or watercourse within the state, and by means of aqueducts or pipe lines conduct the same to said city or town; and such city or town is hereby authorized and empowered to erect and build dams or other works across or at the outlet of any lake or watercourse in said state for the purpose of storing and retaining water therein up to and above high-water mark; and for all the purposes of erecting such aqueducts, pipe lines, dams, waterworks or other necessary structures and storing and retaining water as above provided, such city or town shall have the right to occupy and use the beds and shores up to high-water mark of any such watercourse or lake: Provided, That no such dam or other structure shall impede, obstruct or in any way interfere with public navigation, or other public uses of such lake or watercourse: Provided, That should private property be necessary for any such purposes or for storing water above high-water mark, such city or town may condemn and purchase or purchase and acquire such private property. [Amendment, approved Mar. 14, 1899; L. 1899, p. 250; to take effect immediately.]

§ 1077. Waterworks—Procedure.

Whenever the city council or other corporate authority of any such city or town shall deem it advisable that the city or town of which they are officers shall exercise the authority conferred upon them in relation to waterworks, sewerage, and works for lighting, heating, fuel and power purposes, or cable, electric or other railways any or all thereof, the corporation shall provide therefor by ordinance, which shall specify and adopt the system or plan proposed and declare the estimated cost thereof as near as may be, and the same shall be submitted for ratification or rejection to the qualified voters of said city or town at a general or special election. Ten days' notice of the purpose to submit such system or plan to be voted on at such election shall be given in the newspaper doing the city or town printing by publication in each issue of said paper during said time: Provided, That, if the said city or town is to become indebted and issue bonds or warrants for such waterworks, sewerage system, lighting, heating, fuel or power works or railways, the said proposition and authority to become so indebted shall be adopted and assented to by three-fifths of the qualified voters of said city or town voting at said election, except as to the adoption or rejection of the system or plan of said improvements, which may be adopted by a majority vote. When such system or plan has been

adopted, and no indebtedness is to be incurred therefor, the corporate authorities may proceed forthwith to construct and acquire the improvements or lands contemplated, making payment therefor, from any available fund. When the system or plan has been adopted and the creation of an indebtedness by the issuance of bonds or warrants assented to as aforesaid, the said corporation shall be authorized and empowered to construct and acquire the improvements or lands contemplated, and to create an indebtedness and to issue bonds or warrants therefor, or for the condemnations thereof, as hereinafter provided, to wit: (a) General city or town bonds may be issued to an amount not exceeding five (5) per cent of the taxable property, as shown on the last assessment-roll of the city or town made for general municipal purposes; such bonds to be additional to all other outstanding indebtedness of the city or town created within constitutional limits. The said bonds shall be issued in denominations of not less than one hundred, or more than one thousand dollars; shall be numbered from one up consecutively, shall bear the date of their issue, shall be payable not more than twenty years from date, and shall bear interest not exceeding six per cent per annum, payable semi-annually, with interest coupons attached, and the principal and interest shall be made payable at such place as may be designated. The bonds and each coupon shall be signed by the mayor and attested by the clerk under the seal of the city or town. There shall be levied each year a tax upon the taxable property of such city or town, as the case may be, sufficient to pay the interest on said bonds as the same accrues, and before seven years prior to the maturity thereof, an annual sinking fund sufficient for the payment of said bonds at maturity, which taxes shall become due and collectible as other taxes. Said bonds shall be printed and engraved, or lithographed on good bond paper, and a duly authenticated copy of this act, together with the ordinance of the city or town directing the submission of such plan or system to the qualified voters of such city or town for ratification or rejection shall be printed on each bond, together with a printed copy of a signed statement by the mayor and clerk showing the result of said election. Such bonds shall be sold in such manner as the corporate authorities shall deem for the best interest of the city or town. A register shall be kept of all the bonds, which register shall show the number, date, amount, interest, name of payee, and when and where payable, and each and every bond executed, issued or sold under the provisions of this subdivision. (b) A special fund may be created for the sole purpose of defraying the cost and expense of construction or acquirement of each class of improvements or lands contemplated, or any condemnation thereof, together with such interest as shall accrue upon the obligations issued therefor, into which said funds the authorities of said city or town may obligate and bind the city or town to set aside and pay a fixed proportion of the revenue or proceeds to be derived from the plan or system, lands or uses of which the said improvement forms the whole or part, so long as any obligations are outstanding against said fund. In fixing said proportion the authorities of such city or town shall have due regard to the cost of operation and maintenance of the plan or system as constructed or added to, and shall not set aside into the special fund a greater proportion of

the revenue and proceeds than, in their judgment, will be available over and above such cost of, maintenance and operation. The city or town authorities may from time to time, by ordinance, transfer to any such special fund any other available funds of said city. Bonds or warrants may be issued against any such special fund to the amount of the cost or charges to be met therefrom. Such bonds or warrants shall be issued in denominations of not less than one hundred and not more than one thousand dollars, shall be numbered from one up consecutively, and shall bear interest not exceeding six per cent, payable semi-annually, the principal of any such bonds being payable upon call of the city or town treasurer in the order of their numbers whenever there is in such special fund, after payment of interest on all outstanding bonds or warrants, a sufficient balance to pay the same. And any such bonds or warrants issued against any special fund as herein provided shall be a valid claim of the holder thereof only as against the said special fund, and the fixed proportion of special revenues obligated to be set aside therein, and shall not constitute an indebtedness of such city or town within the meaning of the constitutional provisions and limitations. The principal and interest of any such bonds or warrants shall be made payable at such place as may be designated. Each such bond or warrant shall state upon its face that it is payable from a special fund, naming the said fund and the ordinance creating it. Said bonds or warrants shall be printed, or engraved or lithographed on good bond paper, and a duly authenticated copy of this act, together with the whole or a summary of the ordinances of the city or town authorizing and directing the submission of such plan or system to the qualified voters of such city or town for ratification or rejection, and creating the special fund, shall be printed on each such bond or warrant, together with a printed copy of a signed statement by the mayor and clerks showing the result of such election. Said bonds or warrants shall be sold in such manner as the corporate authorities shall deem for the best interest of the city or town, or the corporate authorities may provide in any contract for the construction or acquirement of the proposed improvement that payment therefor shall be made only in such bonds and warrants at par value thereof. A register shall be kept of all bonds and warrants, which register shall show the number, date, amount, interest, name of payee and where payable, of each and every bond or warrant issued or sold under the provisions of this subdivision. Upon the creation of any such special fund and the issuance of any such obligation against the same, the fixed proportion of revenue shall be set aside and paid into said special fund as provided in the ordinance creating said fund, and in case any city or town shall fail to thus set aside and pay such fixed proportion as aforesaid, the holder of any bond or warrant against such special fund may bring suit or action against the city or town and compel such setting aside and payment.

An emergency exists and this act shall take effect immediately. [Amendment, approved Mar. 16, 1901; L. 1901, p. 177.]

§ 1077. Cities and towns—Waterworks systems.—The submission of a proposition to the voters of a city for an extensive ad-

dition to its system of waterworks, and for a change from a pumping to a gravity system, is governed by Laws 1893, page 12,

section 2, which provides that a plan therefor may be submitted to the people and adopted by majority vote, if no indebtedness is created against the city; and such addition does not come within the purview of Laws 1895, page 18 (Ballinger's Code, §§ 835-837), requiring a three-fifths vote in favor of a change of system, as the latter statute contemplates and governs changes in a system in process of construction: *Faulkner v. Seattle*, 19 Wash. 320, 53 Pac. 365.

Laws 1889-90, page 521, providing for the issuance of bonds to pay for waterworks, and requiring the levy of a tax each year "sufficient to pay the interest on said bonds as the same accrues," is

a special provision providing for the levy of a tax for the purpose only of paying for waterworks, and is not affected by Laws 1889-90, page 190, section 128: *Gay v. New Whatcom*, 26 Wash. 389, 67 Pac. 88.

An election for the purpose of authorizing a town to issue bonds for the construction of waterworks would not be invalidated by the fact that thirty days' notice thereof was given, while the statute prescribed ten days' notice of the election, since the provision governing notice is directory merely, in the absence of a statutory declaration that such formality shall be mandatory: *Hesseltine v. Wilbur*, 29 Wash. 407, 69 Pac. 1094.

Jurisdiction of Cities and Towns Extended Beyond Boundaries, to Protect Water Supply and Works—Penalties.

That for the purpose of protecting the water furnished to the inhabitants of towns and cities within this state from pollution the said towns and cities are hereby given jurisdiction over all property occupied by the works, reservoirs, systems, springs, branches, and pipes, by means of which and of all sources of supply from which such cities or the companies or individuals furnishing water to the inhabitants of such cities or towns obtain their supply of water, or store or conduct the same.

Penalties for Polluting Water Supply.

That the establishment or maintenance of any slaughter-pen, stock feeding yards, hog-pens, or the deposit or maintenance of any uncleanly or unwholesome substance, or the conduct of any business or occupation, or the allowing of any condition upon or sufficiently near the sources from which the supply of water for the inhabitants of any such city or town is obtained, or where such water is stored, or the property or means through which the same may be conveyed or conducted so that such water would be polluted or the purity of such water or any part thereof destroyed or endangered, is hereby prohibited and declared to be unlawful, and is hereby declared to be and constitute a nuisance, and as such to be abated as other nuisances are abated under the provisions of the existing laws of the state of Washington, or under the laws which may be hereafter enacted in relation to the abatement thereof; and that any person or persons who shall do, establish, maintain, or create any of the things hereby prohibited for the purpose of or which shall have the effect of polluting any such sources of water supply, or water, or shall do any of the things hereby declared to be unlawful, shall be deemed guilty of creating and maintaining a nuisance, and may be prosecuted therefor, and upon conviction thereof may be fined in any sum not exceeding five hundred dollars.

Abatement of Nuisances Affecting Water Supply.

If upon the trial of any person or persons for the violation of any of the provisions of this act such person or persons shall be found guilty of creating or maintaining a nuisance as hereby defined or of violating any of the provi-

sions of this act, it shall be the duty of such person or persons to forthwith abate such nuisance, and in the event of their failure so to do within one day after such conviction, unless further time be granted by the court, a warrant shall be issued by the court wherein such conviction was obtained, directed to the sheriff of the county in which such nuisance exists, and the sheriff shall forthwith proceed to abate the said nuisance and the cost thereof shall be taxed against the party so convicted as a part of the costs of such case.

Duties of Health Officers in Relation Thereto.

It is hereby made the duty of the city health officer, city physician, board of public health, mayor of the city or such other officer as may have the sanitary condition of such city or town in charge, to see that the provisions of this act are enforced and upon complaint being made to any such officer to immediately investigate the said complaint and if the same shall appear to be well founded it shall be and is hereby declared to be the duty of such officer to proceed and file a complaint against the person or persons violating any of the provisions of this act and cause the arrest and prosecution of such person or persons.

Authorizes Civil Actions to Abate Nuisance.

That any city supplied with water from any source of supply as hereinbefore mentioned, or any corporation owning waterworks for the purpose of supplying any city or the inhabitants thereof with water in the event that any of the provisions of this act are being violated by any person, may, by civil action in the superior court of the proper county, have the maintenance of the nuisance which pollutes or tends to pollute the said water, as provided for by section 2 of this act, enjoined, and such injunction may be perpetual. [Approved Mar. 13, 1899; L. 1899, p. 114.]

§ 1084. Cities and Towns—Power to Construct Waterworks.

That all cities and towns within the state, other than cities of the first class, where such cities are now empowered or may hereafter be empowered to construct waterworks for irrigation and domestic purposes, may do so either by the entire city or by assessment districts as the mayor and council of said city may determine.

Plans Must be Adopted by Ordinance Before Contract for.

Before letting any contract for the construction of any waterworks for irrigation and domestic purposes, the mayor and council shall by ordinance or resolution adopt the plans therefor and shall fix and establish the assessment districts, if the same is to be constructed at the expense of the district, and such cities and towns are hereby authorized to charge the expense of such waterworks for irrigation and domestic purposes to all the property included within such district which is contiguous or approximate to any street in which any main pipe or lateral pipe of such waterworks for irrigation and domestic purposes is to be placed, and to levy special taxes upon such property to pay therefor, which assessment and tax shall be levied in accordance with the last general assessment of the property within said district for city purposes.

Cost of Work Collected by Assessments and Bonds.

That the purpose of providing for, constructing and maintaining such waterworks for irrigation and domestic purposes and issuing bonds to pay therefor, such cities and towns are hereby authorized to proceed in all ways in accordance with, and apply all the provisions of an act of the legislature of this state, entitled "An act relating to internal improvements in cities authorizing the issuance and collection of bonds upon the property benefited by local improvements, and declaring an emergency," approved March 9, 1893, and of any and all other laws now in force or which may be hereafter enacted relating to the levy and collection of special assessments and taxes. (Approved Mar. 16, 1901; L. 1901, p. 238.)

§ 1103. Sewers and Drains in Cities Other Than First Class.*By Entire City, or by Districts.*

That all cities and towns within the state, other than cities of the first class, where such cities are now or may hereafter be empowered to construct sewers or drains, may do so either by the entire city or by assessment districts, as the mayor and council of said city may determine.

Plans Must be Adopted by Ordinance Previous to Contract.

Before letting any contract for the construction of any sewer or drain, or system of sewerage or drainage, the mayor and council shall by ordinance or resolution adopt the plans therefor and shall fix and establish the assessment district, if the same is to be constructed at the expense of a district, and such cities and towns are hereby authorized to charge the expense of such sewer or drain to all the property included within such district which is contiguous or approximate to any street in which any main pipe or lateral pipe of such sewer, drain or sewer system is to be placed, and to levy special taxes upon such property to pay therefor, which assessment and tax shall be levied in accordance with the last general assessment of the property within said district for city purposes.

Cost may be Collected by Special Assessments.

That the purpose of providing for construction and maintaining such sewer, drain or sewer system, and issuing bonds to pay therefor, such cities and towns are hereby authorized to proceed in all ways in accordance with, and apply all the provisions of, an act of the legislature of this state, entitled "An act relating to internal improvements in cities, authorizing the issuance and collection of bonds upon the property benefited by local improvements, and declaring an emergency," approved March 9, 1893, and of any and all other laws now in force or which may be hereafter enacted relating to the levy and collection of special assessments and taxes.

Whereas, in many cities and towns no adequate provision is made in the charter or laws providing for the organization and government of such cities and towns for the construction of sewers and drains, an emergency is hereby declared to exist, and this act shall take effect and be in force from and after its approval by the governor. [Approved Mar. 14, 1899; L. 1899, p. 244.]

§ 1117. **Street improvements — Assessments—Compromise, and effect of.**—It is within the power of a city to compromise with the owners of property abutting upon a street improvement and accept a less sum from them than the assessments levied against them, but in that case the city becomes liable to a warrant holder for the payment from its general fund for the amount of the assessment remitted by it: *Sheafe v. Seattle*, 18 Wash. 298, 51 Pac. 385.

A city is authorized to include the cost of that portion of a street improvement which is included in the limits of street intersections in the assessment against the property in the assessment district, as provided by Laws 1897, page 316, authorizing cities to do so, if provision therefor is

made by ordinance: *Jones v. Seattle*, 19 Wash. 669, 53 Pac. 1105.

§ 1133. **Assessments—Foreclosure of lien for—Parties.**—In an action by a city to foreclose a street assessment lien, the holder of a mortgage lien upon the premises is not a necessary, though perhaps a proper, party. A mortgagee who has not been made a party to the foreclosure of an assessment lien against the mortgaged premises would not be concluded by such foreclosure from redeeming, or perhaps from contesting, the validity of the assessment in a proper action, provided either of such courses was pursued within the time allowed by the statute of limitations: *Krutz v. Gardner*, 18 Wash. 332, 51 Pac. 397.

Limit Enlarged to Fifty Per Centum of Assessed Value.

§ 1137. **Cities and Towns—Special Assessments.**

That whenever the mayor and council of any city of the first class shall under authority vested in them by any law of this state or the charter of such city, cause any street, avenue, lane, alley, square, or public place of such city to be improved by the laying of a permanent pavement thereon including all necessary foundations, curbing, guttering, drainage facilities and other necessary work incidental to such permanent pavement, the cost of such improvement and the assessment made to provide for said cost and to provide the fund necessary to redeem any bonds issued upon the local improvement district created for such improvement and any interest payable thereon may be levied to a maximum amount equal to fifty (50) per cent of the total increased valuation of the property included within such local improvement district as fixed by the last assessment made for purposes of general taxation: Provided, however, That unless there be presented to such municipal authorities a petition asking for such permanent pavement local improvement, bearing the signatures of the owners of record of at least three-fourths ($\frac{3}{4}$) of the property within the proposed local improvement district, the cost of said improvement and the assessment to be levied therefor shall not exceed the ordinary limit for local improvements fixed by the charter of said city. The authority hereby granted and the fifty (50) per cent limit of cost and assessment hereby authorized may be applied by proper ordinance of any city of the first class in addition to and concurrent with any law or charter provision relating to local improvements: Provided, That the levy and assessment for any improvement of the character designated in section 1 of this act shall be valid and binding up to and including the fifty per cent limit herein fixed regardless of any lesser limit fixed by any law or charter provision: And provided further, That any city which, by charter provision, is authorized to incur a greater limit of cost and assessment than that herein prescribed, shall not be held to be limited by this act.

An emergency exists and this act shall take effect immediately after the passage and approval thereof. [Approved Mar. 6, 1901; L. 1901, p. 58.]

§ 1138. **Cities and Towns—Special Assessments—Fifty Per Cent Limitation—When may be Exceeded.**

It shall be lawful for any city of the first class to order any improvement.

the cost of which is to be charged to abutting property, when said cost shall not exceed fifty per cent of the valuation of the real estate exclusive of improvements within the proposed improvement district according to the valuation last placed upon it for purposes of general taxation, when such improvement is ordered by a unanimous vote of the council of said city of the first class: Provided, That this limit may be exceeded when any improvement shall be petitioned for by the owners of three-fourths of the property to be assessed for said proposed improvement, and when such petition specifies not to exceed a certain higher percentage.

Computation of Values—How Made.

In computing the valuation of property within said district, any non-assessable property owned by the United States, state, county, city, and town or school district, or other public corporation, shall be valued at the same rate as property immediately opposite or adjacent thereto, and in computing the frontage to be included in said district, all such property, payment for the improvement of which is to be paid out of the general funds, shall be included.

Powers Conferred by Act Cumulative.

Any city of the first class may avail itself of this act, notwithstanding any provision in its charter inconsistent herewith, but it shall not be construed as taking away from any city of the first class any power which it possesses under its charter or any state law.

An emergency exists and this act shall take effect immediately. [Approved Mar. 12, 1903; L. 1903, p. 121.]

§ 1139. Reassessments for improvements—Interest on prior assessment.—In making a reassessment to pay the expense of a local improvement, the city may properly provide for the payment of interest maturing on deferred installments of the assessment: *Heath v. McCrea*, 20 Wash. 342, 55 Pac. 432.

Under Laws 1893, page 228, section 5, empowering the city council to correct omissions in a reassessment-roll upon the hearing before it, after the same had been certified by the board of public works, the council has authority to increase the assessments so as to include accumulated interest, although such interest had not been mentioned in the ordinance ordering the reassessment nor included in the roll as returned by the board of public works: *Lewis v. Seattle*, 28 Wash. 639, 69 Pac. 393.

Evidence of invalidity of prior assessment.—In order to authorize a town to make a reassessment for street improvements under the provisions of Laws 1893, page 226 (Ballinger's Code, §§ 1139-1149), it is unnecessary that the invalidity of the original assessment be adjudicated in a direct proceeding thereon, but it is sufficient if the decisions of the courts in other cases have determined the illegality of assessments levied in the same manner:

Town of Tumwater v. Pix, 18 Wash. 153, 51 Pac. 353.

Where an assessment for a street improvement was invalid for the reason that it included the valuation of improvements on the abutting land, no part of the assessment could be enforced, although the valuations of lands and improvements were separately stated: *Heath v. McCrea*, 20 Wash. 342, 55 Pac. 432.

Where a municipal corporation has enacted an ordinance reciting the illegality and invalidity of assessments for certain street improvements, as originally made, and providing a reassessment, in conformity with the statute authorizing such proceedings whenever an original assessment has been declared invalid by the courts, the city cannot assert the validity of the original assessments, nor successfully resist mandamus proceedings to compel a reassessment for such improvements: *Phillips v. Olympia*, 21 Wash. 153, 57 Pac. 347.

Laws 1893, page 226, section 1, providing for a reassessment for local improvements in cities and towns, when the original assessment has been declared invalid for any cause, does not contemplate a direct proceeding for the purpose of adjudicating its invalidity, but it is sufficient if its illegality has been declared

either directly or by virtue of any decision of a court: *State ex rel. Hemen v. City of Ballard*, 16 Wash. 418, 47 Pac. 970.

In an action to enforce a reassessment of the costs of local improvements, a finding that the property had been duly assessed under proceedings which were invalid is supported by the introduction in evidence of the original assessment-roll, pleadings, findings and judgment of the superior court and judgment of the supreme court declaring said assessment ineffectual and void: *City of Whatcom v. Bellingham Bay Imp. Co.*, 16 Wash. 131, 47 Pac. 236, 1102.

Validity of reassessment.—In an action to enforce the collection of a reassessment upon land benefited by a street improvement, in pursuance of charter and statutory provisions therefor, the decision of the court in a former cause declaring the original assessment invalid for any reason, is not conclusive of any fact appearing in issue at the trial upon the reassessment: *Ryan v. Town of Sumner*, 17 Wash. 228, 49 Pac. 487.

A reassessment for the cost and expense of local improvements, necessary because of the invalidity of a prior assessment, creates a lien upon the property benefited under the provisions of Laws 1893, page 226, governing reassessments: *Heath v. McCrea*, 20 Wash. 342, 55 Pac. 432.

Where an assessment for a street improvement has been declared by the courts invalid and a reassessment against the property benefited has been made under Laws 1893, page 226, the reassessment must be held valid when it appears that it was made with reference to the benefits received by the property affected, that the property was equitably and proportionately assessed, and that the sum assessed against any particular parcel of land does not exceed the benefits received by such property from the public improvement: *Fogg v. Hoquiam*, 23 Wash. 340, 63 Pac. 234.

The fact that after a street improvement was begun a portion of it was stopped by injunction, and the improvement of two of the intermediate blocks of the street was discontinued, would not invalidate a reassessment for the completed portions which apportioned the charges as if the improvement were continuous, if the charge made against each lot was according to the benefits received by it, and the party complaining was unable to show actual injury to himself resulting from the methods pursued in making the improvement and the reassessment therefor: *Lewis v. Seattle*, 28 Wash. 639, 69 Pac. 393.

Property subject to assessment.—A railroad track and right of way are liable to assessment for benefits resulting from the construction of street improvements, under Laws 1893, page 227, sections 1, 2,

which provide that all property benefited by the improvement shall be assessed to the extent of its proportionate part of the expense: *City of Whatcom v. Bellingham etc. R. R. Co.*, 16 Wash. 137, 47 Pac. 237.

Limitation of actions to enforce payment of assessments.—There is no statute limiting the right of a city to levy a reassessment after the original assessment has been declared void: *Lewis v. Seattle*, 28 Wash. 639, 69 Pac. 393.

§ 1140. **Reassessments for local improvements—Ordinance for, requirements of.**—The fact that the act relating to reassessments for the purpose of paying the costs of local improvements (Laws 1893, p. 226) declares in sections 1 and 2 thereof that the city council shall by ordinance order and make the reassessments does not require the amount of the assessments charged against each lot to be fixed in the first instance by the city council, since the same act directs the board of public works or other proper authority of such city or town to make a new assessment-roll in an equitable manner with reference to benefits received and certify the same to the city council, and by section 5 of the act it is provided that the council shall appoint a time for hearing objections to such assessment and shall have power to correct, confirm or set it aside: *Lewis v. Seattle*, 28 Wash. 639, 69 Pac. 393.

§ 1142. **Street improvements—Reassessment of benefits—Notice—Due process of law.**—Notice of the reassessment of costs for local improvements, under a statute requiring objections to the roll to be made within ten days from the last publication of the notice, cannot be held as so short as not to constitute due process of law: *City of Whatcom v. Bellingham Bay Imp. Co.*, 16 Wash. 131, 47 Pac. 236, 1102.

Collateral attack.—In an action to foreclose a street assessment lien, defendant cannot dispute the validity of the assessment, when he has had full notice of the levy and an opportunity to file his objections thereto with the city council, which by statute is vested with ample power and authority to make corrections therein and its decision authorized as a final determination of the regularity, validity and correctness of the assessment: *City of New Whatcom v. Bellingham Bay Imp. Co.*, 18 Wash. 181, 51 Pac. 360.

§ 1143. **Reassessments—Objections to, by whom heard.**—Laws 1893, page 226, section 1, which provides for a reassessment to pay the cost of a local improvement in case the original assessment has been declared invalid does not contemplate a direct proceeding for the purpose of adjudicating the invalidity of the assessment upon any particular lot, but it

is sufficient if the illegality of the assessment has been declared in litigation involving other lots: *Port Angeles v. Lauridsen*, 26 Wash. 153, 66 Pac. 403.

Under Laws 1893, page 228, section 5, empowering the city council to correct omissions in a reassessment-roll upon the hearing before it, after the same had been certified by the board of public works, the council has authority to increase the assessments so as to include accumulated interest, although such interest had not been mentioned in the ordinance ordering the reassessment, not included in the roll as returned by the board of public works: *Lewis v. Seattle*, 28 Wash. 640, 69 Pac. 393.

The fact that an assessment was not legally levied as respects benefits charged cannot be urged on foreclosure when objections had not been urged at the time of making assessment: *City of Whatcom v. Bellingham Bay Imp. Co.*, 16 Wash. 131, 47 Pac. 236, 1102.

Where a property owner has received notice of a proposed reassessment of the expense of making a street improvement, and has failed to appear at the appointed time and object to the confirmation by the town council of the assessment as levied, he cannot subsequently raise the objection that his property was assessed in a sum more than double the cost of improving the street in front of his property: *Town of Tumwater v. Pix*, 18 Wash. 153, 51 Pac. 353.

Where objections to the correctness of the amount of an assessment and objections because the assessment was based on the valuation of the property instead of according to the benefits received by reason of the improvement were not urged before the city council at the time set for hearing objections, they cannot be urged on foreclosure of the assessment liens: *Northwestern etc. Bank v. Spokane*, 18 Wash. 456, 51 Pac. 1070.

The provision of Laws 1893, page 226, authorizing a city council to enter a decision determining the regularity of a reassessment, and providing for an appeal from such decision, is not unconstitutional as an attempt to confer judicial powers in violation of article 4, section 1, of the constitution, conferring all such powers upon the courts of the state: *Bellingham Bay Imp. Co. v. New Whatcom*, 20 Wash. 53, 54 Pac. 774.

In an action involving the validity of an assessment for a street improvement, the property owner is estopped to raise the objection that the assessment was not restricted to the benefits received, when, after notice of the levy and an opportunity to object, he failed to urge such objection before the city council prior to its confirmation of the assessment: *Annie*

Wright Seminary v. Tacoma, 23 Wash. 109, 62 Pac. 444.

Where a city council has regularly reassessed abutting property for street improvements, and has given notice to property owners to file objections to such assessment, within a certain time, as required by statute, an owner who fails to so object cannot afterward dispute the validity of the assessment in an action to remove the cloud on his title created by a sale of the property upon foreclosure of the assessment lien: *McNamee v. Tacoma*, 24 Wash. 591, 64 Pac. 791.

Mode of assessing benefits.—An assessment of property for street improvements according to its frontage, is not improper, under a statute requiring assessments to be according to benefits, when the benefits have been actually assessed in proportion to frontage: *Id.*

§ 1144. **Reassessments — Interest on prior assessment must be included.**—In making a reassessment to cover the cost of a street improvement, the original assessment for which had been declared void, the city should include in such new assessment the accrued interest upon the sums due for making such improvement: *Philadelphia etc. Trust Co. v. New Whatcom*, 19 Wash. 225, 53 Pac. 1063.

The failure of a city in making a reassessment to provide a special fund to pay for a street improvement, to include accrued interest therein, will render the city liable for the amount of such interest, although the creditor against such fund may have taken no action to have the city include such interest in the reassessment proceedings. Where a city has provided a special fund by reassessment proceedings to pay for the cost of a street improvement, owing to the invalidity of the original assessment, and make such reassessment cover only the actual cost of the improvement without the accrued interest, mandamus will lie to compel the city to apply moneys in such special fund to the payment of the oldest outstanding warrant together with the accrued interest thereon, even though the fund will be exhausted thereby to the exclusion of some of the outstanding warrants: *Philadelphia etc. Trust Co. v. New Whatcom*, 19 Wash. 225, 53 Pac. 1063.

Under Laws 1893, page 228, section 6, empowering a city to assess the property benefited "for an amount which shall not exceed the actual cost and value of the improvement," a city is authorized to include the cost of intersecting streets and alleys in the charge to the property benefited, and its discretion in that respect is not reviewable in the courts: *Lewis v. Seattle*, 28 Wash. 640, 69 Pac. 393.

In making a reassessment upon property benefited by a local improvement, a

city is authorized by Laws 1893, page 229, section 6, to include in the assessment the interest accumulated upon the original cost of the work: *Id.*

§ 1147. **Assessments—Appeal from confirmation of.**—An appeal from the action of the city council to the superior court, authorized by Laws 1893, page 230, sections 8, 9, to be taken within ten days after the confirmation and approval of an assessment-roll, is premature, when such confirmation and approval have not been made in conformity with a city ordinance requiring that the method of approving assessment-rolls should be by the passage of ordinances to that effect: *Bellingham Bay Imp. Co. v. City of New Whatcom*, 17 Wash. 496, 50 Pac. 477, 1102.

Where a property owner desires to appeal to the superior court from an order of the city council confirming a reassessment of the cost of a street improvement, made under Laws 1893, page 226, he must, in order to give the court jurisdiction, within ten days after the confirmation file with the city clerk a notice of appeal, in which is set forth a description of the property and his objections to the assessment: *White v. Tacoma*, 20 Wash. 361, 55 Pac. 319.

§ 1150. **Reassessments—Limitations of actions on.**—The statute of limitations begins to run against assessments for public improvements only from the time a valid assessment is made, and, where the original assessment has been adjudicated invalid, a cause of action does not accrue until the levy of a valid reassessment: *Fogg v. Hoquiam*, 23 Wash. 341, 63 Pac. 234.

Where the file marks on a complaint show that the action was commenced within the statutory period, while the appearance docket would indicate it had been commenced one day later, in the absence of any showing of the true date, the court will presume, as against the statute of limitations, that the certificate on the complaint shows the true date: *Lewis v. Seattle*, 28 Wash. 641, 69 Pac. 393.

The act of March 20, 1895 (Laws 1895, p. 270), providing that actions to enforce liens for special assessments by cities and towns may be commenced within ten years after their delinquency, has the effect of giving a ten years' extension to rights of action which had not been barred by the two years' limitation act at the time of the taking effect of the later act: *State*

ex rel. Hemen v. Ballard, 16 Wash. 419, 47 Pac. 970.

The bar of the statute upon the commencement of an action to enforce the collection of an assessment for a street improvement begins to run, not from the day the assessment is made due and payable and operative as a lien upon the property, but from the date of delinquency as provided in the ordinance providing for the levy and collection of the assessment: *City of Seattle v. O'Connell*, 16 Wash. 625, 48 Pac. 412.

The bar of the statute of limitations upon an action to enforce collection of a street assessment does not apply until the city has made a valid assessment, or reassessment, which can be enforced. Although the statute of limitations should be regarded as commencing to run from the time a cause of action could have been perfected by the exercise of reasonable diligence, yet the time that a city was in good faith proceeding with an invalid assessment scheme should be excluded, and the bar only deemed to commence running from the expiration of that time. Under the act of 1895 (Laws 1895, p. 270), extending the statute of limitations in actions for the enforcement of assessments for street improvements to ten years, and making it applicable to existing causes of action, which had accrued while a two year limitation was in force, the right of the city to proceed with the assessments, and of warrant holders to compel the enforcement of the assessment scheme, would be extended for ten years longer in all cases in which the bar of the former statute had not been completed at the time of taking effect of the later: *Bowman v. City of Colfax*, 17 Wash. 344, 49 Pac. 551.

Actions to enforce collection of assessments by foreclosure of the lien upon the property benefited were, prior to the passage of the act of March 20, 1895, prescribing a ten year limitation, governed by the Code of Procedure, section 120, which provides that "an action for relief not hereinbefore provided for shall be commenced within two years after the cause of action shall have accrued." The act of March 20, 1895 (Laws 1895, p. 270), prescribing a ten year limitation upon actions to enforce the collection of assessments for street improvements does not revive the right of action in cases where the bar of the former statute fixing a two year limitation had become complete: *City of Seattle v. De Wolfe*, 17 Wash. 349, 49 Pac. 553.

§ 1163a. **Payment of Assessments With Warrants on Improvement Funds.**

Municipal corporations may from time to time authorize by ordinance or resolution, the acceptance, in due order of priority of right, by the county treas-

urer or city treasurer or other designated officers, of warrants issued by such corporations against local improvement funds in satisfaction of assessments levied to supply such funds.

Municipal corporations are authorized to accept local improvement warrants in satisfaction of judgments rendered in favor of such corporations against property owners who have become delinquent in the payment of assessments levied to pay for local improvements.

Municipal corporations are authorized to accept local improvement warrants in payment for certificates of purchase held by such corporations in cases where the property of delinquents has been sold by the sheriff under execution or by the county treasurer or city treasurer at tax sale for failure to pay assessments for local improvements.

No warrants shall be available for the purposes designated by this act except in payment of an assessment for a local improvement, the fund for which was created by the ordinance or resolution by virtue of which the warrant was issued.

This act is not intended to supersede or repeal charter provisions of any municipal corporation, but to be supplementary to and concurrent with such provisions; and the powers conferred by this act may be exercised from time to time under such restrictions and upon such conditions as municipal corporations may by ordinance prescribe. [Approved Mar. 13, 1899; L. 1899, p. 156.]

§ 1185. Bonds for Local Improvements 'Authorized.

Whenever any city shall have power and authority vested in it by its charter or by any law of this state to order or cause the whole or any part of the streets, lanes, alleys, squares or public places of such city to be graded, regraded, planked, replanked, graveled, regraveled, piled, repiled, paved, repaved, macadamized, remacadamized, capped, recapped, or to order or cause sidewalks, sewers, manholes, culverts, curbings, gutters, water mains, or crosswalks to be constructed or to order or cause to be made any local improvements whatever, and to levy and to collect assessments upon the property benefited thereby or abutting, adjoining, contiguous or approximate thereto, to defray the whole or any portion of the cost and expense of any such improvement, the proper authorities of such city may, in their discretion, provide for the payment of the cost and expense of such improvement by bonds of the district, which shall include the property liable to assessment for the payment of the cost and expense of such improvement according to the charter of such city, issued to the contractor, or by the proceeds of such bonds to be issued and sold as hereinafter provided.

Must Issue Pursuant to Ordinance—Interest—Denominations—Coupons.

Such bonds shall be issued only in pursuance of ordinances of the cities issuing the same, and by their terms shall be made payable on or before a date not to exceed ten years from and after the date of the issue of such bonds, which latter date may be fixed by resolution, by council or other legislative body of said city and shall bear such interest as may be provided in such ordinance, not exceeding eight per centum per annum, which interest shall be payable annually,

or semi-annually, as may be provided by ordinance, and each bond shall have attached thereto interest coupons for each interest payment. Such bonds shall be in such denominations as shall be provided in the ordinance ordering their issue and shall be numbered from one upwards, consecutively, and each bond and coupon shall be signed by the mayor and attested by the clerk or comptroller of such city: Provided, however, That said coupons may in lieu of being so signed have printed thereon fac-simile of the signatures of said officers and each bond shall have the seal of such city affixed thereto and shall refer to the improvement to pay for which the same shall be issued and to the ordinance ordering the same, each bond shall provide that the principal sum therein named, and the interest thereon, shall be payable out of the local improvement fund created for the payment of the cost and expense of such improvement, and not otherwise. Such bonds shall not be issued in any amount in excess of the cost and expense of the improvement.

Disposition, how Made.

The bonds issued under the provision of this act or such portion of such bonds as may remain unsold if same is ordered as hereinafter provided may be issued to the contractor constructing the improvement in payment therefor, or the ordinance directing the issue of such bonds may provide that the same may be sold by some duly authorized officer or officers of the city, in the manner prescribed therein, at not less than their par value and accrued interest, and that the proceeds thereof shall be applied in payment of the cost and expense of the improvement.

Assessments to Pay Bonds.

In all cases where any city shall issue bonds as provided in this act to pay the cost and expense of any local improvement, the said cost and expense shall be assessed against the lots and parcels of land, which under the provisions of law and the charter of such city, shall be liable therefor, but the ordinance levying such assessment shall declare that the sum charged thereby against each of such lots and parcels of land may be paid in equal annual installments; the number of which installments shall be equal to the number of years which the bonds issued to pay for the improvement may run, with interest upon the whole sum so charged at a rate fixed by said ordinance, and each year thereafter one of such installments together with the interest due thereon and on all installments thereafter to become due shall be collected in the same manner as shall be provided by law and the charter and ordinances of such city for the collection of assessments for such improvements in cases where no bonds are issued.

Redemption from Assessment.

The owner of any lot or parcel of land charged with any such assessments may redeem the same from all liability for the contract price of such improvement by paying the entire assessment charged against such lot or parcel of land, without interest, within thirty days after notice to him of such assessment, which notice shall be given as follows: The city treasurer shall, as soon as the assess-

ment roll has been placed in his hands for collection, publish a notice in the official newspaper of the city for ten consecutive daily or two consecutive weekly issues, that the said roll is in his hands for collection and that any assessment therein may be paid at any time within thirty days from the date of the first publication of said notice without penalty, interest or cost. The bonds herein provided for shall not be issued prior to twenty days after the expiration of the thirty days above mentioned, but may be issued at any time thereafter. The owner of any such lot or parcel of land may redeem the same from all liability for said assessment at any time after said thirty days by paying the entire installments of said assessment remaining unpaid and charged against such lot or parcel at the time of such payment, with interest thereon to the date of the maturity of the installment next falling due. In all cases where any assessment or any installment thereof is paid as herein provided the same shall be paid to the city treasurer, or to the officer whose duty it is to collect said assessments, and all sums so paid shall be applied solely to the payment of the cost and expense of such improvements or the redemption of the bonds issued therefor.

Remedy of Holder in Case of City's Neglect to Collect.

If the city shall fail, neglect or refuse to pay said bonds or to promptly collect any of such assessments when due, the owner of any such bonds may proceed in his own name to collect such assessment and foreclose the lien thereof in any court of competent jurisdiction, and shall recover in addition to the amount of such bonds and interest thereon, five per centum, together with the cost of such suit. Any number of holders of such bonds for any single improvement may join as plaintiffs and any number of owners of the property on which the same are a lien may be joined as defendants in such suit.

Payment of Interest and Principal.

The city treasurer shall pay the interest on the bonds authorized to be issued by this act out of the respective local improvement funds from which they are payable. Whenever there shall be sufficient money in any local improvement fund against which bonds have been issued under the provisions of this act, over and above sufficient for the payment of interest on all unpaid bonds, to pay the principal of one or more bonds, the treasurer shall call in and pay such bonds: Provided, That such bonds shall be called in and paid in their numerical order: Provided further, That such call shall be made by publication in the city official newspaper on the day following the delinquency of the installment of the assessment or as soon thereafter as practicable, and shall state that bonds No. — (giving the serial number or numbers of the bonds called) will be paid on the day the next interest coupons on said bonds shall become due, and interest on said bonds shall cease upon such date.

This Enactment Cumulative.

Nothing herein shall be construed as repealing or modifying any existing law, manner or method for cities of the first class to issue bonds for local improvements, but shall be construed as an additional and concurrent power and authority. Any city whose charter provides for the issuance of bonds for local

improvements, payable only from the proceeds of special assessments, is hereby authorized to issue such bonds in the manner provided in such charter, and the holder of any such bond shall look only to the fund provided by such assessment for the principal or interest of such bond.

Liability of City.

Neither the holder nor owner of any bond issued under the authority of this act shall have any claim therefor against the city by which the same is issued, except from the special assessment made for the improvement for which such bond was issued, but his remedy in case of nonpayment, shall be confined to the enforcement of such assessments. A copy of this section shall be plainly written, printed or engraved on each bond so issued.

Whenever any city has heretofore issued bonds for the purpose of paying the cost and expense of local improvements, or has sold such bonds and paid such cost and expense from the proceeds thereof, such city may, with the consent of the holders of such bonds, exchange for them bonds authorized by this act.

Cities may pass general ordinances for the purpose of more effectually carrying this act into effect.

An emergency exists, and this act shall take effect immediately. [Approved Mar. 14, 1899; L. 1899, p. 234.]

§§ 1185-1189. **Levies of an assessment** to pay bonds maturing at one date cannot be applied to payment of bond maturing at a prior date: *Baker v. Meacham*, 18 Wash. 319, 51 Pac. 404.

Notice to abutting owners.—Notice by mail to an abutting property owner, as provided in Laws 1893, page 231, section

1, sent by the city clerk thirty days before the issuance of bonds for the cost of a street improvement, in order to give him an opportunity to redeem from the assessment against his property is sufficient: *Jones v. Seattle*, 19 Wash. 669, 53 Pac. 1105.

§ 1239a. Public Health—Duties of Practicing Physicians.

All practicing physicians in cities of the first and second class in said state are hereby required to report to the local boards of health of such cities, in writing, the name, age, sex, occupation and residence of every person having tuberculosis who has been attended by, or who has come under the observation of such physician for the first time, within five days of such time.

Duties of Health Board.

All local boards of health of cities of the first and second class in this state are hereby required to receive and keep a permanent record of the reports required by the first section of this act to be made to them; such records shall not be open to public inspection, but shall be submitted to the proper inspection of other local and state boards of health alone, and such records shall not be published nor made public.

It shall be the duty of such local boards of health unless requested by the attending physician not to do so, to furnish to each patient or to the head of the family where such patient resides, printed instructions for the prevention of the communication of such disease to other persons; to enforce compliance with section one (1) of this act; to see that the premises occupied by any such patient are kept in good sanitary condition, and within five days after

the death or removal of any such patient, to see that such premises are thoroughly and properly disinfected. The expense of such disinfection shall be a charge against the owner of such premises; and, on the failure of such owner to properly disinfect such premises within five days after notice to do so given him by such board of health, it shall be the duty of such board to have such disinfection done, at the expense of such city, and the costs thereof shall be a lien on said premises in favor of such city and may be enforced by the city by proper action.

Penalties.

Any practicing physician who shall willfully fail to comply with the provisions of section one of this act shall be guilty of a misdemeanor, and on conviction thereof may be fined for the first offense not exceeding five dollars, and for any subsequent offense not exceeding one hundred dollars.

It is hereby made the duty of every person having tuberculosis and of everyone attending such person, and of the authorities of public and private institutions, hospitals or dispensaries, to observe and enforce the sanitary rules and regulations prescribed from time to time by the boards of health, of such cities and of the state for the prevention of the spread of pulmonary tuberculosis. [Approved Mar. 13, 1899; L. 1899, p. 117.]

§ 1247. Plumbers to be Licensed.

That any person, firm or corporation now, or that may hereafter be engaged in, or working at the business in cities of the first class, this state, either as a master or employing plumber or as a journeyman plumber, shall first secure a license therefor in accordance with the provisions of this act.

How License Obtained.

Any person desiring to engage in or work at the business of plumbing, either as a master or employing plumber, or as a journeyman plumber, in any city of the first class, shall apply to the president of the board of health or other officer having jurisdiction in the locality where he intends to engage in or work at such business, and shall at such time and place as may be designated by the board of examiners hereinafter provided for, to whom such application shall be referred, be examined as to his qualifications for such business. In case of a firm or corporation, the examination or licensing of any one member of such firm or the manager of such corporation shall satisfy the requirements of this act: Provided, however, That actual work of plumbing may be performed only by persons qualified and licensed as in this act provided. Provided, That it shall not be necessary for any person to have a license to make connections with city water mains or make water connections not connecting with sewers; the approval of the work by the city water inspector, or other officer designated in the city, shall be sufficient for the purposes of this act.

Board of Examiners, Who Shall be.

There shall be in every city of the first class, having a system of water supply and sewerage, a board of examiners consisting of the president of the board of health, the inspector of plumbing of said city, if any there be, and three mem-

bers who shall be practical plumbers (two shall be master plumbers, one shall be a journeyman plumber); the president of the board of health and the inspector of plumbing shall be members, ex-officio, of said board and serve without compensation: Provided, That in localities where the required number of plumbers cannot be secured, such vacancies may be filled by the appointment of reputable physicians. Said members shall be appointed by the board of health; if there be no board of health or health officer of said city, the mayor of said city shall, within three months from and after the passage of this act, appoint said board of examiners, for the term of one year, said appointment to date from the first day of July, 1901, and thereafter annually, and said appointed members of such board shall serve without compensation: Provided, That if in any such city there is no inspector of plumbing, said board of health shall appoint a fourth member of said board of examiners, who shall be a practical plumber, and whose term of office shall be the same as heretofore provided for said three members.

Organization of Board—Examination of Applicants.

Said board of examiners shall, within ten days after the appointment of said members, meet and organize by the selection of a chairman, and shall designate the time and place for the examination of applicants desiring to engage in or at the business of plumbing within their respective jurisdictions. Said board shall examine said applicants as to their practical knowledge of plumbing, house drainage and plumbing ventilation, and if satisfied of the competency of the applicant, shall so certify to the board of health. Such board shall thereupon issue a license to such applicant, authorizing him to engage in or at the business of plumbing, either as a master or employing plumber, or as a journeyman plumber. The fee for a license for a master or employing plumber shall be five dollars; for journeyman plumber be one dollar. Said license shall be valid and have force in district where issued, and shall be renewed annually upon payment of one dollar.

Inspectors of Plumbing—Appointment of.

The board of health of each city mentioned in section three of this act shall, within three months from and after this act, appoint one or more inspectors of plumbing (if such appointment has not already been made), who shall be practical plumbers, and shall hold office until removed by such board of health for cause, which must be shown. The compensation of such inspectors shall be determined by the city council of said city, and be paid from the treasury of their respective cities. Said inspectors so appointed shall inspect all plumbing work for which permits are hereafter granted within their respective jurisdictions, in process of construction, alteration or repair, and shall report to said board of health all violations of any law, ordinance or by-law relating to plumbing works, and also perform such other appropriate duties as may be required by said board.

To Make Regulations for Plumbing.

The board of health of each city of the first class in this state having a system of water supply and sewerage, shall, within three months from the passage

of this act, prescribe rules and regulations for the construction, alteration and inspection of plumbing and sewerage placed in or in connection with any building in such city, which shall be approved by ordinance by the council of such city, and the board of health shall further provide that no plumbing work shall be done, except in the case of repairs or leaks, without a permit being issued first therefor, upon such terms and conditions as such board of health of said city shall prescribe.

Penalties.

Any person violating any provision of this act shall be deemed guilty of a misdemeanor, and be subject to a fine not exceeding fifty dollars, nor less than five dollars, for each and every violation thereof. The license of any master or journeyman plumber may be at any time revoked for incompetency, dereliction of duty, or other sufficient causes, after a full and fair hearing by a majority of the examining board; but an appeal may be taken from said examining board to the state board of health, and license may be revoked by the examining board provided in section three of this act.

Disposition of License Fees.

All money derived from the licenses issued to applicants shall go to defray the expense of holding such examinations and other necessary expenses of the board of health at place where examination was held.

That an act entitled "An act to regulate the sanitary construction of house drainage and plumbing, in cities of the first class," approved March 16, 1897, be and the same is hereby repealed. [Approved Mar. 8, 1901; L. 1901, p. 94.]

[§§ 1247, 1248, 1249, 1250, 1251, 1252, 1253, 1254, repealed by act of Mar. 8, 1901; L. 1901, c. 61, p. 94.]

§ 1264. Plats, effect of recording as to fee of highways.—The public control of streets and highways in this state does not amount to an ownership of the fee, under Ballinger's Code, sections 1264-1276, which declare the effect and purpose of dedication by city plats: *Schwede v. Hemrich Co.*, 29 Wash. 21, 69 Pac. 362.

Duty of city in relation thereto.—Although a city may have no right to lay

out a street over tide lands belonging to the state, yet where a street has been laid out over such land, used by the city as a highway and the public invited to use it as such, it becomes the duty of the city to maintain it in proper repair, and to protect the life and limb of those so invited to travel upon it: *Taake v. City of Seattle*, 16 Wash. 90, 47 Pac. 220.

§ 1265. Cities and Towns—Streets Over Tide Lands.

Whenever the council of any city or town has heretofore by resolution or ordinance, or either, or both, found that any street or streets, or specified portions thereof, upon the water front, within or in front of such city or town, are imaginary streets, existing only upon maps or plats, and that the same in the portions specified have never been opened for public travel or improved as public highways, and that it will be for the best interest of such city or town, its trade or commerce, not to take possession of or improve any such street or specified portions thereof, and that the closing of such street or specified portions thereof for a period therein provided, and the occupancy of the space so closed by persons, or corporations, for the purpose of trade, commerce, naviga-

tion, transportation, manufactures, or other industries, will be without injury to any public or private interest, but will be of great benefit to the public and such community, and therein authorizing such occupancy for such purposes, for the period therein specified, such resolutions, ordinances, and the action of the council of such city or town as therein determined and set forth are hereby validated: Provided, That this shall not be construed as validating any such lease for a longer term than thirty years from the date of the commencement of the term mentioned in such lease: And provided further, That this act shall not apply to cities of the first class.

An emergency exists and this act shall take effect immediately. [Approved Mar. 8, 1899; L. 1899, p. 84.]

§ 1267a. Cities and Towns—Vacation of Streets, Alleys, etc.

Petition for—Time of Hearing Fixed by Resolution—Notice of Hearing.

That any person or body corporate in any city owning an interest in any real estate abutting upon any street or alley who may desire to vacate such street or alley, or any part thereof, may petition the city council of such city or town to make vacation, giving a description of the property to be vacated, which petition shall be filed with the city clerk of said city or town; and, (if said petition shall be signed by the owners of more than two-thirds (2-3) of the private property abutting upon the part of such street or alley sought to be vacated) said city council shall, by resolution, fix a time when said petition shall be heard and determined, which time shall not be more than sixty (60) days, nor less than twenty (20) days after the date of the passage of such resolution and upon the passage of such resolution it shall be the duty of the city or town clerk to give twenty (20) days' notice of the pendency of said petition by a written or printed notice set up in three (3) of the most public places in said city or town and a like notice in a conspicuous place on the street or alley sought to be vacated, which said notice shall contain a statement that a petition has been filed to vacate said street or alley, which shall be described in said notice, together with a statement of the time and place fixed for the hearing of said petition.

Hearing—Vacation by Ordinance.

At the time appointed for the hearing of said petition or at such time as the time may be adjourned to by the city council, the same shall be heard, and if the council shall determine to grant said petition or any part thereof, such city or town shall be authorized and have authority by ordinance to vacate such street, or alley or any part thereof.

Ownership of Vacated Land.

That when any street, alley or public way in any incorporated city or town in this state has heretofore been or may hereafter be vacated by the council or legislative body of said city or town, the property within the limits of any such street, alley, or public way so vacated shall belong to the abutting property owners, one-half to each, unless within six months after the taking effect

of this act, any person or corporation, who may feel himself or itself aggrieved by such a division, may commence an action in the proper courts of this state to determine the title to any such street, alley or public way so vacated.

No vested rights shall be affected by the provisions of this act. [Approved Mar. 16, 1901; L. 1901, p. 175.]

Altering and Replatting Additions and Plats.

That whenever three-fourths in number and area of the owners of any townsite, city plat or plats, addition or additions, or part thereof, shall be desirous of altering the plat or plats, replatting or vacating the same or any part thereof, they may prepare a plat or plats, showing such alterations or replat, drafted upon a copy of the existing plat or plats, or that portion desired to be altered, replatted or vacated, and file the same with the clerk of the board of county commissioners, or city council having jurisdiction of the establishment or vacation and control of the streets to be affected, accompanied with a petition for the change desired.

Hearing Petition for—Time—Notice of.

That thereupon and upon the payment of the cost thereof the said clerk shall fix a time for the hearing of said petition, which time shall not be less than thirty nor more than sixty days after the filing of said petition, and shall cause a notice to be issued under his hand and the seal of said county or city, stating by whom and when said petition was filed, the object thereof and when and where the same will be heard. Said notice shall also describe the property sought to be altered, replatted or vacated.

That said clerk shall cause said notice to be served, as in the manner provided for service of summons in civil actions, upon all the owners of property not joining in said petition, as shown by the records in the auditor's office of the county wherein the townsite, plat or plats, addition or additions may be located.

Award of Change—Assessment of Damages and Benefits—Costs.

That thereafter such board of county commissioners, or city council shall have full and complete jurisdiction to inquire into and determine the merits of the changes or relief prayed for, assess damages or benefits, award the same and make such order in the premises as justice and the public welfare may require.

That the whole of the land embraced in the plat or plats proposed to be altered, replatted or vacated shall be and constitute an assessment district, and damages shall be assessed and benefits awarded as now provided by law for the establishment, alteration or vacation of streets, alleys and roads by said board of county commissioners and city council.

Filing of New Plat or Replat.

That any plat or replat so adjudicated, adjusted and approved showing the lines of the original and adjudicated plat shall be filed and recorded with the auditor of the county where the property is situated, and shall thereafter be the lawful plat and a substitute for all former plats.

Appeal.

That any owners of any portion of the property affected by the actual award or final judgment of such board of county commissioners or city council may appeal to the superior court having jurisdiction of appeals from justice of the peace in the locus in quo.

That such appeals shall be taken in the same manner and form as appeals from justices of the peace.

Provisions of Act Declared Cumulative.

That nothing in this act contained shall in any way change, limit or affect the power now vested in a board of county commissioners or city council to vacate streets and alleys and parts of streets and alleys. [Approved Mar. 14, 1903; L. 1903, p. 139.]

[§ 1291, repealed by act of 1903; L. 1903, p. 201.]

§ 1291. **Cities and towns—Election of marshal—Term.**—Laws 1895, page 351, which provides that in all cities of the third and fourth classes the marshal shall be elected by the city council, and shall hold office for one year, does not, in view of the scope shown by its title, "An act providing for the election of city marshal in cities of the third and fourth classes," work a repeal or an amendment of Laws 1893, page 103, in any particular beyond the manner of election of the city marshal; that portion of the act of 1893 prescribing the term of office of city officers continuing in force, and making

the term of the marshal, as well as that of the other officers, begin the first Tuesday in January next succeeding the day of his election: State ex rel. Swan v. Taylor, 21 Wash. 672, 59 Pac. 489.

§ 1292. See note to 5622.

§ 1299. **Evidence—Copies of ordinances.**—The introduction in evidence of certified copies of ordinances is proper without any showing of inability to produce the originals, and the expense of such copies may be properly taxed as an item of costs: City of New Whatcom v. Bellingham Bay Imp. Co., 16 Wash. 131, 47 Pac. 236, 1102.

§ 1320. Of Elections—Who are Electors.

All male persons over the age of twenty-one years, possessing the following qualifications shall be entitled to vote at all elections: All persons who at the time of the taking effect of this act are qualified electors of this state; all other male persons who are over the age of twenty-one, citizens of the United States, who have lived in the state one year and in the county ninety days and in the city, town, ward or precinct thirty days immediately preceding the election at which they offer to vote, and who shall be able to read and speak the English language: Provided, That Indians not taxed shall never be allowed the elective franchise. [Enacted 1901; L. 1901, c. 135, § 1, p. 284.]

§ 1349. **Nomination—Certification of.**—It being the duty of the presiding officer of a political convention to certify to the secretary of state or the clerk of the board of county commissioners the nominations for office made by such convention, under Ballinger's Code, sections 1349, 1350, the superior court has jurisdiction to compel such presiding officer by writ of mandate to certify the name of the person selected for office by such convention: State ex rel. Cann v. Moore, 23 Wash. 115, 62 Pac. 441.

Where, without any fraud or oppression, the presiding officer of a political convention announces, as the result of a ballot, that the nomination of a certain per-

son has been made, and, though a mistake has been made in the computation of the ballots, there is no protest raised by the convention or any member thereof, until after its adjournment sine die, the nomination so announced must be treated by the courts as the will of the convention: State v. Moore, 23 Wash. 276, 62 Pac. 769.

§ 1352. **Nomination by certificate of electors.**—Under General Statutes, section 367, the fact that the signers were all residents of one county, though the district is composed of several counties, constitutes no objection to the certificate. Under the election laws of this state (Gen. Stats., §§ 363-396), a candidate

nominated by electors is not the nominee of a political party, but of the individual electors nominating him: State ex rel. Hemen v. Elliott, 17 Wash. 18, 48 Pac. 734.

§ 1362. **Ballots, preparation by voter.**—Where there was but one set of candidates to be voted for upon the official ballot used in a general election, and the voter pasted the name of another person over that of one of the candidates and cast his ballot without making an X after the names of any of the candidates, his vote

should be counted: State v. Rountree, 28 Wash. 669, 69 Pac. 404.

Was not repealed by section 1370, passed in 1895, which declares, in providing for the method of marking ballots, that any elector may paste over any other name the name of any person for whom he may wish to vote, since the act of 1895 was merely amendatory of existing statutes and did not undertake to supersede the provisions of the old law, except in the matter of marking the ballots with an X after, instead of before, the names of candidates: Id.

§ 1364. **Ballots—How Prepared and Printed.**

All ballots prepared under the provisions of this chapter shall conform to the following requirements:

First. Shall be of white and a good quality of paper, and the names shall be printed thereon in black ink.

Second. Every ballot shall contain the name of every candidate whose nomination for any office specified in the ballot has been filed according to the provisions of this act and no other names.

Third. All nominations of any party or group of petitioners shall be placed under the title of such party or petitioners as designated by them in their certificate of nomination or petition, and the name of each nominee shall be placed under the designation of the office for which he has been nominated.

Fourth. There shall be a ○ under the party designation and a □ at the right of the name of each of its nominees so that the voter may clearly indicate the party or the candidate or the candidates for whom he wishes to cast his ballot; the circle shall be one-half inch in diameter and the square one-fourth of an inch. The size of type for the designation of the office shall be nonpareil caps; that of the candidates not smaller than brevier or larger than small pica caps and shall be connected with squares by leaders.

Fifth. The list of candidates of the republican party shall be placed in the first column of the left-hand side of the ballot, the democratic party the second column and of other party [parties] in the order in which the certificates of nomination have been filed.

The line of demarcation between the party columns shall be inverted nonpareil rule.

If any of the above-named parties shall fail to nominate a ticket, the name of such party shall not appear upon the ballot.

Sixth. No candidates' [candidate's] name shall appear more than once upon the ballot: Provided, That any candidate who has been nominated by two or more political parties may, upon a written notice filed with the clerk of the board of county commissioners at least twenty days before the election is to be held, designate the political party under whose title he desires to have his name placed.

Seventh. Under the designation of the office if more than one candidate is to be voted for there shall be indicated the number of candidates to such office to be voted for at such election.

Eighth. Upon each official ballot a perforated line one-half inch from the left-hand edge of said ballot shall extend from the top of said ballot towards the bottom of the same two inches thence to the left-hand edge of the ballot and upon the space thus formed there shall be no printing except the number of such ballot which shall be upon the back of such space in such a position that it shall appear on the outside when the ballot is folded. The county auditor shall cause official ballots to be numbered consecutively beginning with number 1, for each separate voting precinct.

Ninth. Official ballots for a given precinct shall not contain the names of nominees for justices of the peace and constables of any other precinct except in cases of municipalities where a number of precincts vote for the same nominee for justices of the peace and constables, and in the latter case the ballots shall contain only the names to be voted for by the electors of such precinct. Each party column shall be two and five-eighths inches wide.

Tenth. On the top of each of said ballots and extending across the party groups, there shall be printed instructions directing the voters how to mark the ballot before the same shall be deposited with the judges of election. Next after the instructions and before the party group shall be placed the questions of adopting constitutional amendments or any other question authorized by law to be submitted to the voters of such election. The arrangement of the ballot shall in general conform as nearly as possible to the form hereinafter given. [Amendment, approved Mar. 16, 1901; L. 1901, p. 186.]

§ 1366. Ballots—Duty of candidate with respect to.—The right of a candidate to examine ballots before they are sent out, make objections thereto and apply to the courts for the purpose of compelling the use of proper ballots, is a right existing independent of statute. Where a candidate for public office, with knowledge of the proposed use of improper ballots, fails to take steps to correct the errors in the ballots by instituting an action to enforce or protect his rights, he cannot, after defeat at the polls, be heard to complain of errors whose correction he might have procured prior to election; and the fact that the judge of the superior court for that district had, by writ of mandate, in a proceeding to which the candidate was not a party, directed the incorporation of the errors in the ballots used on election, affords no excuse for a failure to resort to proceedings in court for their correction: *State v. Elliott*, 17 Wash. 18, 48 Pac. 734.

§ 1370. Ballot—How prepared by voter. A cross on an election ballot opposite the words "vote for one," one stroke of which extends below that space and into the space marked "Citizens' Ticket," is not a compliance with the statutory requirement that the ballot be marked opposite the political designation of the party for whom the elector intends to vote. An election ballot must be so marked as to make it reasonably certain for whom the elector intended to vote, although the statute declares only those ballots void from which it is impossible to determine the elector's choice, and requires a part to be counted when the ballot is sufficiently plain to gather therefrom a part of the voter's intention. An election ballot, although not marked in the spaces provided, will be counted where it was marked immediately to the right of the names of the candidates for whom the elector voted: *State v. Peter*, 21 Wash. 243, 57 Pac. 814.

§ 1373. Disabled and Illiterate—Assistance for.

Any voter who declares to the judges of election, or when it shall appear to the judges of election that he cannot read, and was at the time of the taking effect of this act a qualified elector, or that by blindness or other physical disability he is unable to mark his ballot, shall upon request receive the assistance of one or two of the election officers in the marking thereof, and such officer or officers shall certify on the outside thereof that it has been so marked, with his

or their assistance, and shall thereafter give no information regarding the same. The judges may in their discretion require from such person so offering to vote a declaration of such disability, that he was at the time of the taking effect of this act a qualified elector and of his disability to read and speak the English

INSTRUCTIONS.—Mark x in ○ under party name, for whose candidate you wish to vote.
If you desire to vote for any candidate of any other party place x in □ at the right of the name of such candidate.
(Here place any state or local questions to be voted on.)

REPUBLICAN TICKET.	DEMOCRATIC TICKET.	PROHIBITION TICKET.
○	○	○
PRESIDENTIAL ELECTORS. S. G. COSGROVE ... □ F. W. HASTINGS... ..□ C. SWEENEY □ J. BOYD.....□		
REPRESENTATIVES IN CONG. F. W. CUSHMAN□ W. L. JONES.....□		
JUDGES SUPREME COURT. W. MOUNT□ R. O. DUNBAR.....□		
GOVERNOR. J. M. FRINK□		
LIEUTENANT GOVERNOR. H. McBRIDE□		
SECRETARY OF STATE. S. H. NICHOLS□		
STATE TREASURER. C. W. MAYNARD□		
STATE AUDITOR. J. D. ATKINSON□		
ATTORNEY GENERAL. W. B. STRATTON.....□		
SUPT. PUBLIC INSTRUCTION. R B. BRYAN.....□		
COM. PUBLIC LANDS. S. A. CALLVERT.....□		
STATE SENATOR 18TH DIST. A. S. RUTH.....□		

[FORM OF BALLOT MENTIONED ON PAGE 93, § 1364.]

language, to be made by the voter under oath before them and they are hereby qualified to administer the same. No elector, other than the one who may because of his inability to read, or physical disability, be unable to mark his ballot, shall divulge to any person within the polling-place the name of any

candidate for whom he intends to vote or to ask or receive the assistance of anyone within the polling place in the preparation of his ballot. [Amendment, approved Mar. 18, 1901; L. 1901, p. 287.]

§ 1376. Ballots, when not void.—The laws of this state, directing the manner of voting under the so-called Australian system, must be regarded as directory rather than mandatory in their provisions, since General Statutes, section 413, provides that “no ticket shall be lost for want of form, if the board of judges can determine to their satisfaction the person voted for and the office intended,” and Laws 1895, page 393, section 10, provides that “when a ballot is sufficiently plain to gather therefrom a part of the voter’s intention, it shall be the duty of the judges of election to count such part.” Ballots are not invalidated by failure to strictly comply with the statutory directions for marking them, under the liberal rule for arriving at the voter’s intention allowed by our statutes; but, when the markings are evidently intended for the purpose of expressing the voter’s intention, the ballot should be counted. Under this rule, ballots are entitled to be counted although having a X to the left, instead of the right, of the name of the candidate voted for; when having a double X opposite a name; when having X opposite names of candidates of one party and lines drawn through names of opposing candidates; when having a X opposite one candidate and an obliterated X opposite the opposing candidate; when having pencil marks run through lines of amendments submitted, or a X over all of them, or the words “no,” “yes,” “against,” “for,” written opposite: State ex rel. Orr v. Fawcett, 17 Wash. 188, 49 Pac. 346.

§ 1380. Ballots—Secrecy of.—An election ballot on the back of which is a statement purporting to be made by the voter, reciting his inability to register, and declaring that by reason of his residence he is entitled to his franchise, was properly rejected, since, if the voter was not registered, he was not entitled to vote, and, if he placed the writing on the ballot himself it was a distinguishing mark, which requires its rejection: State ex rel. Hyland v. Peter, 21 Wash. 244, 57 Pac. 814.

Neither the placing of a paster upon an official ballot, as allowed by law governing elections, nor the failure to mark the ballot with a X, when but one set of candidates is being voted for, can be held to be a violation of Ballinger’s Code, section 1380, which prohibits an elector’s placing any mark upon his ballot by which it may be identified: State ex rel. Harkins v. Rountree, 28 Wash. 670, 69 Pac. 404.

§ 1388. Ballots not to bear distinguishing mark.—Under Laws 1895, page 393, section 11, providing that “no ballot shall bear any impression, device, color or thing designated to distinguish such ballot from other legal ballots or whereby the same may be known or designated,” ballots cannot be counted when they have written thereon the names of individuals who are not candidates or such expressions as “rats” and “don’t want any king”: State ex rel. Orr v. Fawcett, 17 Wash. 188, 49 Pac. 346.

§ 1391. Elections—Duties of Officers When Challenge Made.

When any person offering to vote is challenged, it shall be the duty of the judges to declare to him the qualifications of an elector, and the inspector or one of the judges shall tender him the following oath: “You do swear (or affirm) that you will truly and fully answer all questions as shall be put to you touching your place of residence and qualifications as an elector.” The inspector or one of the judges shall then proceed to question the person challenged in relation to his name, place of residence, how long he has resided in the precinct and county, where his last place of residence was, also as to his citizenship and whether a native or naturalized citizen and if the latter, when, where and in what county or before what officer he was naturalized; whether he can read and speak the English language, and may submit to him for reading extracts of English prose, and all such other questions as shall tend to test his qualifications as to citizenship and the right to vote. [Amendment, approved Mar. 18, 1901; L. 1901, p. 288.]

§ 1393. Manner and Form of Challenge.

If such person shall insist that he is entitled to vote, and the board of judges find no cause to reject his vote under the preliminary examination, and the challenge shall not be withdrawn, he shall not be entitled to vote unless he takes the following oath to be administered by the inspector or one of the judges, viz.: "You do swear (or affirm as the case may be) that you have resided in this state twelve months preceding this election; in this county ninety days; and in this precinct or ward thirty days, and have not voted this day, and that you are otherwise qualified to vote at this election;" and in case the person offering a vote is a naturalized citizen he shall produce evidence of his citizenship. [Amendment, approved Mar. 18, 1901; L. 1901, p. 288.]

§ 1403. Tickets, when not rejected.—Section 413 of the General Statutes, providing that "no ticket shall be lost for want of form, or mistake in initials of names, if the board of judges can determine to their satisfaction the person voted for and the office intended," is not repealed by implication by the act of March

21, 1895 (Laws 1895, p. 386), relating to elections, as such act does not purport to be a complete law upon the subject, but confines itself to amending certain specified sections of the General Statutes upon that subject: State ex rel. Orr v. Fawcett, 17 Wash. 189, 49 Pac. 346.

§ 1406. Transmission of Returns—Disposition of.

The said package shall be delivered to the county auditor by one of the judges or clerks of the election in person, or may be sent by registered mail; and when the voting precinct is more than fifteen (15) miles from the county seat the said package shall be forthwith transmitted to the county auditor by registered mail. When sent by mail, it shall be mailed by one of the judges. The other of said certificates, with poll list and tally papers, oaths of judges, inspector and clerks shall be retained by the inspector and preserved by him at least six months. Tally papers, poll list or certificate returned from any election shall not be set aside, nor rejected for want of form, nor on account of not being strictly in accordance with the directions of this chapter, if the same be satisfactorily understood: Provided, That if any judge or inspector of election shall neglect or fail to seal and return the ballots, tally list and poll books in the manner provided by law, such judge or inspector shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than five nor more than fifteen dollars. [Amendment, approved Mar. 14, 1903; L. 1903, p. 124.]

§ 1445. Registration of Voters.

In all cities and towns and all voting precincts having a voting population of two hundred and fifty or more, who are entitled to the right of suffrage as shown by the number of votes cast at the preceding general election, there shall be a registration of voters prior to all general, special or municipal elections as herein provided. [Amendment, approved Mar. 18, 1901; L. 1901, p. 284.]

§ 1451. Poll-books Must be Kept at Registration Office.

Such poll-books shall at all times, except as herein otherwise provided, be kept at the office of such city or town clerk or officer of registration of such city.

town or precinct; and the city or town clerk, and the person designated by the board of county commissioners as herein provided, shall be the officer of registration of such city, town or precinct, and it shall be his duty to register all citizens of such city, town or voting precinct, on such poll-books, as hereinafter provided: Provided, That in all cities of the first class, the city clerk shall designate by the notice required by section 1453, to be published, a time and place where not less than two, nor more than six consecutive week days prior to March 1st, of each year, the registration poll-book for each precinct in such city will be open in such precinct for the registration of voters of such precinct, and the city clerk shall provide for the precinct book in charge of an officer of registration, to be at the place and kept open for the registration of voters qualified to register between the hours of 9 A. M. and 9:30 P. M. on the days designated in said published notice. [Amendment, approved Mar. 12, 1903; L. 1903, p. 81.]

§ 1453. Publication of Notice of Registration.

It shall be the duty of the city or town clerk, or officer of registration, upon receipt of the poll-books in this chapter provided for, to cause to be published a notice in a newspaper of general circulation in such city, town or precinct, for ten days, notifying the citizens of said city, town or precinct, that they can register at his office, and if in the city of the first class, in each precinct, at the place and during the time designated in such notice, as provided in section 1451, according to the provisions of this chapter; and a like notice shall be published each year, within twenty days after the first Monday in January of each year. [Amendment, approved Mar. 12, 1903; L. 1903, p. 81.]

§ 1454. Poll-books, Open When—Notice of Closing.

The poll-books in this chapter provided for shall be open at all times during the year for the registration of voters, except that they shall be closed on any day in which a primary election shall be held in such city or town under the laws governing primary elections in cities and towns, and excepting that they shall be closed in all general, special and municipal elections for the purpose of organization, twenty days preceding any election to be held in said city, town or precinct. The city or town clerk or officers of registration shall give notice of the closing of said books by notice to be published at least ten days in a newspaper of general circulation in such city, town or precinct, and by posting written or printed notices in three of the most public places in any such city, town or precinct, at least ten days preceding the day of such closing, and such notice of publication shall have at least two insertions in such newspaper; in all special city, town or precinct elections such notice shall be given by the posting aforesaid only at least five days before such closing and the poll-books shall be closed ten days preceding all such special or local elections. [Amendment, approved Mar. 18, 1901; L. 1901, p. 285.]

§ 1455. Poll-books—How Arranged.

The poll-books aforesaid shall be so arranged as to admit the alphabetical classification of the names of the voters, and ruled in parallel columns with appropriate heads as follows: Date of registration; name; age; occupation; place of residence; place of birth; time of residence in the state, county, ward and precinct, and if of foreign birth, name and place of court and date of declaration of intention to become a citizen of the United States, or date of naturalization, and with column for signature and one for remarks, and one column for checking the name of voter at the time of voting. If the voter registering is of foreign birth he shall at the time of registering produce satisfactory evidence to the registration officer that he was at the time of the adoption of the constitution of the state of Washington a qualified elector of this state, or that he is a naturalized citizen of the United States. Under the head of place of residence shall be noted the number of lot and block or number and street where the applicant resides or some other definite description sufficient to locate the residence; and the voter so registered as provided in this section shall sign his name on the registry opposite the entries above required, in the column headed "signature" unless he is a qualified elector at the time of the taking effect of this act, and shall not be capable of writing his name, in case of physical infirmity he be unable to write his name, in either of which cases he shall on the left-hand margin of said column make his mark or cross and such mark as is usual in indicating his signature, and some person who personally knows said voter, and who is personally known to the registering officer and who is capable of writing his name shall sign in said column immediately opposite said mark, as an identifying witness thereto. [Amendment, approved Mar. 18, 1901; L. 1901, p. 286.]

§ 1456. Application for Registration—Affidavit.

No person shall be registered unless he appears in person before the city or town clerk or officer of registration at his office during office hours and apply to be registered and give his name, age, occupation, number of place or residence, place of birth, time of residence in the state, county, ward or precinct, and if naturalized, furnish satisfactory evidence to such registration officer that he is capable of reading and speaking the English language so as to comprehend the meaning of ordinary English prose, unless he is incapacitated through physical infirmities, in which case he shall furnish satisfactory evidence that he was before such infirmity capable of reading and speaking the English language, unless such person so offering was a qualified elector at the time of the taking effect of this act, in which case the provisions with reference to reading and speaking the English language shall not apply; and such applicant shall make and subscribe to the following oath or affirmation:

State of Washington, {
County of ———. } ss.

I, ———, do solemnly swear or affirm that I am a male person over twenty years, eleven months and ten days of age, that I am a native born or naturalized

citizen of the United States, or was a legal elector of the territory of Washington at the time of the adoption of the constitution of the state of Washington; that I have been an actual permanent resident of the state of Washington for eleven months and ten days last past, of the county of _____ for seventy days last past and of the _____ precinct ten days last past, and I have not lost my civil rights by being convicted of an infamous crime; that I was either a qualified elector on the first day of July, 1901, or that I can read and speak the English language.

Subscribed and sworn to before me this ____ day of _____.

Said affidavit shall be bound in book form and preserved with the other records of the city, town or precinct. [Amendment, approved Mar. 18, 1901; L. 1901, p. 286.]

§ 1518. **Official bonds.**—The fact that an incumbent of a county office failed to give a new bond after the expiration of the two years would not disqualify him for the office, since Ballinger's Code, section 1518, makes the old bond sufficient during the time such officer shall continue to hold such office: State ex rel. Meredith v. Tallman, 24 Wash. 427, 64 Pac. 759.

§ 1520. **Defective execution.**—An official bond which was executed by a principal and his sureties by affixing their sig-

natures to the justification which followed immediately after the bond, upon the printed form, instead of signing at the end of the stipulations and conditions, was a valid bond, where the names of the principal and sureties were set forth in the body of the bond and it had been delivered and accepted by the obligors and obligee with the intent that it should constitute a binding obligation: Tumwater v. Hardt, 28 Wash. 684, 687, 69 Pac. 368.

§ 1527. **Official Bonds—Justification of Sureties.**

In all cases where official bonds are required or may be hereafter required, from state, county, township or precinct officers, the officer or officers whose duty it is or may be to approve such bonds, shall not accept or approve any such bonds except such bond be that of a surety company, unless the sureties thereon shall severally justify before an officer authorized to administer oaths as follows: 1. On a bond given by a state or county officer that he is a resident and freeholder within this state, and on a bond given by a township or precinct officer that he is a resident and freeholder within the county in which such township or precinct is situated. 2. That he is worth double the amount for which he becomes surety over and above all his debts and liabilities, in property situated within this state which is not exempt from seizure and sale under execution. [Amendment, approved Feb. 15, 1901; L. 1901, p. 13.]

§ 1534. **Surety Companies Taken as Surety on Official and Other Bonds.**

Whenever any bond, recognizance, obligation, stipulation, or undertaking is by law, state, municipal or otherwise, or by the rules or regulations of any board, court, judge, body or organization, or officer, state, municipal, or otherwise, required or permitted to be made, given, tendered or filed, for the security or protection of any person or persons, corporation, municipality, state, or any department thereof, or any other organization whatever, conditioned for the doing or not doing of any thing in such bond, recognizance, obligation, stipula-

tion or undertaking, specified, any and all heads of departments, public officers, state, county, town or municipal, and any and all boards, courts, judges and municipalities, now or hereafter required or permitted to accept or approve of the sufficiency of any such bond, recognizance, obligation, stipulation or undertaking may, in the discretion of such head of department, court, judge, public officer, board or municipality, accept such bond, recognizance, obligation, stipulation or undertaking, and approve the same, whenever the same is executed, or the conditions thereof are guaranteed, solely by a corporation, with net assets or paid up unimpaired capital of not less than three hundred and fifty (\$350,000) thousand dollars, incorporated under the laws of the United States, or of any state, and authorized under its charter or articles of incorporation to guarantee the fidelity of persons holding places of public or private trust, to guarantee the performance of contracts, and to execute and guarantee bonds and undertakings required or permitted in actions or proceedings in law or equity: Provided, That such corporation has complied with all the provisions of this act. And whenever any such bond, recognizance, obligation, stipulation or undertaking is so required to be made, given, tendered, or filed with one surety, or with two or more sureties, the execution of the same or the guaranteeing of the performance of the conditions thereof, shall be sufficient when executed or guaranteed solely by such corporation, so authorized, and shall be in all respects a full and complete compliance with every requirement of every law, ordinance, rule or regulation, that such bond, undertaking, recognizance, obligation or stipulation shall be executed or guaranteed by one surety or by two or more sureties, or that such sureties shall be residents, householders, or freeholders, or both, and a full and complete compliance with every other requirement of every law, ordinance, rule or regulation, relating to the same, and no justification by such company shall be necessary or required, and any and all heads of departments, courts, judges, public officers, boards and municipalities whose duties it may be, or shall hereafter be, to accept or approve the sufficiency of any such bond, recognizance, obligation, stipulation or undertaking, may accept and approve the same, when executed or guaranteed solely by such corporation, and all such corporations are hereby vested with full power and authority to execute and guarantee such bonds, recognizances, stipulations, obligations and undertakings, whether given under the laws of this state or of the United States, or of any state or county.

Premium Paid Therefor may be Allowed as Expense or Costs, When.

Any receiver, assignee, trustee, guardian, executor, administrator, committee or other fiduciary, required by law to give bond as such, may include as a part of his lawful expenses, such reasonable sum paid to such a corporation for such suretyship, not exceeding one per cent per annum on the amount of said bond, as the head of the department, court, judge or officer by whom, or the court or body by which he was appointed, allows, and in all actions and proceedings, the party entitled to recover costs may include therein such reasonable sum as may have been paid such company for executing or guaranteeing any such bond or undertaking therein as may be allowed by the court or judge before whom the action or proceeding is pending.

Company Executing Bond Estopped to Deny Its Corporate Power Thereeto.

That any corporation which shall execute or guarantee any bond, recognizance, stipulation, obligation or undertaking under the provisions of this act, shall be estopped in any proceeding to enforce the liability which it shall have assumed to incur, to deny its corporate power to execute or guarantee such instrument, or assume such liability.

How Released.

Any corporation executing any bond, recognizance, obligation, stipulation or undertaking, and any such surety may be released from its liability on the same terms and conditions as are or may be by law prescribed for the release of individuals upon any such bond, recognizance, obligation, stipulation or undertaking; it being the true intent and meaning of this act to enable corporations created for the purpose to execute and become surety on bonds, recognizances, obligations, stipulations or undertakings required or permitted by law, state or municipal, or otherwise, or by the rules or regulations of any court, judge, officer, board, city charter, village, town organization or otherwise.

Duty of Insurance Commissioner Respecting Same.

The insurance commissioner must cause every corporation before engaging in business in this state as a surety or guaranty corporation under the provisions of this act, to file in his office as follows:

First. If incorporated under the laws of this state, a copy of the articles of incorporation, or charter of the corporation, together with any amendments or alterations made therein;

Second. If incorporated under the laws of any other state or country a copy of its articles of incorporation, or charter, duly certified by the officer having the custody of such articles and such certificate to show that such corporation is organized under the laws of such state or country, and that it is authorized to do business therein as a surety corporation;

Third. A certificate signed by the president of such corporation showing that said corporation has net assets, or paid up unimpaired capital, of not less than three hundred and fifty thousand (\$350,000) dollars.

The insurance commissioner shall issue to any surety corporation his certificate of authority to transact business in this state under the following conditions: When said corporation has complied with all the provisions of this act, and when he is satisfied that said corporation has net assets or paid up and unimpaired capital of not less than three hundred and fifty thousand (\$350,000) dollars.

Unlawful to Engage in Business Without Complying with Statute.

It shall be unlawful for any corporation to transact business as a surety corporation in this state, unless the corporation shall have complied with all the provisions of this act, and shall have obtained a certificate of authority from the insurance commissioner as herein provided.

Penalty.

If any such surety corporation, its agent, or attorney shall do business as such in this state without having complied with the provisions of this act, said corporation, its agents or attorneys so doing business shall be guilty of a misdemeanor and shall be subject to a fine of not less than one hundred dollars or more than five hundred dollars.

Expiration of Authority.

Every certificate of authority granted pursuant to the provisions of this act, to a surety corporation to do business in this state, shall expire on the 31st day of December, after date of issue. If the insurance commissioner is not satisfied that the net assets or paid up unimpaired capital remain not less than three hundred and fifty thousand (\$350,000) dollars, and that said corporation may be safely intrusted with the continuance of its authority to do business in this state, he shall revoke its certificate of authority.

Appointment of Agent Upon Whom Service of Process Made.

Every such corporation organized outside of this state, shall constitute and appoint an agent who shall reside in this state, to be designated as hereinafter required. Such appointment shall be in writing, signed by the president or chief officer of such corporation, and shall be attested by its corporate seal, and shall contain the name of the agent and his place of residence, in this state, and shall authorize such agent to accept service of process in any action or suit pertaining to the property, business or transactions of such corporation within this state, in which such corporation may be a party, the signature of such president or chief officer attested by the corporate seal to such written appointment, shall be sufficient proof of the appointment of such agent. Such appointment, when duly executed, shall be filed for record in the office of the insurance commissioner by such corporation, and shall be there recorded, and such corporation shall have and keep continually some resident agent, empowered as aforesaid, during all the time such corporation shall conduct or carry on any business within this state, and service of any process, pleading, notice or other paper on such agent shall be taken and held as due service on such corporation. If any attorney of any surety company, appointed under the provisions of this act, shall remove from the state, or become disqualified in any manner from accepting service, valid service may be made on such corporation by service upon the insurance commissioner: Provided, That in such case the insurance commissioner shall immediately notify such corporation, and the principal agent for the Pacific Coast, inclosing a copy of such service by mail, post paid: And, provided further, That in such case no proceeding shall be had within forty days after such service on the insurance commissioner. Such corporation may change its agent from time to time by filing and recording with the insurance commissioner a new appointment, stating the change of such agent.

Fees.

The insurance commissioner of the state shall require in advance the following fees:

First. For filing articles of incorporation or certified copies of articles, by-laws or other certificates required to be filed in his office, \$25; issuing certificates of authority to do business, \$10. For each renewal certificate of authority, \$10. The said insurance commissioner shall also require, and it shall be the duty of all corporations herein provided for, and doing business in this state, or that may hereafter do business in this state, to file with the insurance commissioner annually on or before the 15th day of February in each year, a statement under oath stating the amount of all premiums received by said corporations, during the year ending December 31st preceding, in this state, and the amounts actually paid under the obligations of such bonds, recognizances, stipulations, obligations and undertakings during the same time, and shall pay into the state treasury through the insurance commissioner a tax of two per cent on all such premiums collected, less the amount of losses actually paid, as hereinbefore stated. Said tax shall be due and payable on the first day of March succeeding the filing of the statement provided for herein. Any corporation failing or refusing to render such statement and to pay the required two per cent tax on premiums for more than thirty days after the time hereinabove specified, shall be liable to a fine of \$2 for each additional day of delinquency. And the tax may be collected by distraint, and the fine recovered by an action to be instituted by the insurance commissioner in the name of the state in any court of competent jurisdiction; and the insurance commissioner shall revoke and annul the certificate of authority of said delinquent organization until such taxes and fine are fully paid, and notice thereof given to the said insurance commissioner. And it shall be unlawful for any such corporation to transact any business whatever in this state until such taxes are fully paid; and while such tax remains unpaid any such delinquent corporation is hereby prohibited from transacting any business whatever in this state.

Revocation of License—Publication of Notice of.

When the license of authority of any surety corporation doing business in this state has been revoked by the insurance commissioner, the same shall be published four times in some newspaper of general circulation published in this state.

Failure to Pay Judgment on Bond—Penalty for.

That if any such company shall neglect or refuse to pay any final judgment or decree rendered against it upon any such recognizance, stipulation, bond or undertaking made or guaranteed by it under the provisions of this act, from which no appeal has been taken for three months after the rendition of such judgment or decree, it shall forfeit all right to do business under this act.

Companies Licensed to be Surety, Deemed to be Insurance Company, in Law.

Every corporation doing business in this state or which shall hereafter do business in this state under the provisions of this act shall be deemed and taken to be an insurance company and shall be subject to the insurance laws of the state so far as the same are applicable.

That an act of the legislature of the state of Washington entitled "An act

relative to recognizances, stipulations, bonds and undertakings, and to allow certain corporations to be accepted as surety thereon, and to provide for the payment of the charges of such suretyship on the same as part of the lawful expense and costs of the principal or principals on the same, and repealing an act of the legislature of the state of Washington entitled 'An act relating to official bonds of state, county, city, town and precinct officers,' approved March 20, 1895, and all other inconsistent acts, and declaring an emergency," approved March 17, 1897, and all acts and parts of acts inconsistent with the provisions of this act are hereby repealed: Provided, That nothing in this act affects bonds heretofore given.

Whereas, existing laws of this state relating to sureties on bonds, recognizances, obligations, stipulations and undertakings are defective and insufficient, an emergency is hereby declared to exist, and therefore this act shall take effect and be in force from and after its passage and approval by the governor. [Approved Mar. 14, 1903; L. 1903, p. 128.]

§ 1535. Premiums on Official Bonds Paid by Municipal Corporation; When.

Any receiver, assignee, trustee, guardian, executor, administrator or other fiduciary, required by law or the order of any court or judge to give bond as such, may include, as part of his lawful expenses, such reasonable sum paid to such a corporation for becoming surety on such bond, not exceeding one per centum per annum on the amount of said bond, as the head of department, court, judge or officer by whom, or the court or body by which he was appointed, allows; and hereafter the state, or any county, city, town or school district may, in its discretion, pay out of its general funds the cost of any official bond furnished by any officer of the state or of such county, city, town or school district, when the same is executed by such surety corporation, not to exceed, however, one per centum per annum on the amount of said bond; and in all actions and proceedings the party entitled to recover costs may include therein such reasonable sum as may have been paid to such corporation for executing or guaranteeing any bond or undertaking therein, as may be allowed by the court or judge before whom the action or proceedings is pending.

An emergency is hereby declared to exist, and this act shall take effect immediately. [Amendment, approved Mar. 7, 1899; L. 1899, p. 55.]

§ 1563. Classification of Counties—Salaries of County Officers.

For the purpose of regulating the compensation of county officers and for all other purposes herein provided for the several counties of this state are hereby classified according to their population:

Counties containing a population of eighty thousand or over shall belong to and be known as counties of the first class;

Counties containing a population of seventy thousand and under eighty thousand shall belong to and be known as counties of the second class;

Counties containing a population of sixty thousand and under seventy thousand shall belong to and be known as counties of the third class;

Counties containing a population of fifty thousand and under sixty thousand shall belong to and be known as counties of the fourth class;

Counties containing a population of forty-five thousand and under fifty thousand shall belong to and be known as counties of the fifth class;

Counties containing a population of forty thousand and under forty-five thousand shall belong to and be known as counties of the sixth class;

Counties containing a population of thirty-five thousand and under forty thousand shall belong to and be known as counties of the seventh class;

Counties containing a population of thirty thousand and under thirty-five thousand shall belong to and be known as counties of the eighth class;

Counties containing a population of twenty-five thousand and under thirty thousand shall belong to and be known as counties of the ninth class;

Counties containing a population of twenty thousand and under twenty-five thousand shall belong to and be known as counties of the tenth class;

Counties containing a population of eighteen thousand and under twenty thousand shall belong to and be known as counties of the eleventh class;

Counties containing a population of sixteen thousand and under eighteen thousand shall belong to and be known as counties of the twelfth class;

Counties containing a population of fourteen thousand and under sixteen thousand shall belong to and be known as counties of the thirteenth class;

Counties containing a population of twelve thousand and under fourteen thousand shall belong to and be known as counties of the fourteenth class;

Counties containing a population of ten thousand and under twelve thousand shall belong to and be known as counties of the fifteenth class;

Counties containing a population of nine thousand and under ten thousand shall belong to and be known as counties of the sixteenth class;

Counties containing a population of eight thousand and under nine thousand shall belong to and be known as counties of the seventeenth class;

Counties containing a population of seven thousand and under eight thousand shall belong to and be known as counties of the eighteenth class;

Counties containing a population of six thousand and under seven thousand shall belong to and be known as counties of the nineteenth class;

Counties containing a population of five thousand five hundred and under six thousand shall belong to and be known as counties of the twentieth class;

Counties containing a population of five thousand and under five thousand five hundred shall belong to and be known as counties of the twenty-first class;

Counties containing a population of four thousand five hundred and under five thousand shall belong to and be known as counties of the twenty-second class;

Counties containing a population of four thousand and under four thousand five hundred shall belong to and be known as counties of the twenty-third class;

Counties containing a population of three thousand five hundred and under four thousand shall belong to and be known as counties of the twenty-fourth class;

Counties containing a population of three thousand and under three thousand five hundred shall belong to and be known as counties of the twenty-fifth class;

Counties containing a population of two thousand five hundred and under three thousand shall belong to and be known as counties of the twenty-sixth class;

Counties containing a population of two thousand and under two thousand five hundred shall belong to and be known as counties of the twenty-seventh class;

Counties containing a population of one thousand five hundred and under two thousand shall belong to and be known as counties of the twenty-eighth class;

Counties containing a population of one thousand or less and under one thousand five hundred shall belong to and be known as counties of the twenty-ninth class. [Amendment, approved Mar. 18, 1901; L. 1901, p. 289.]

§ 1564. County officers, salaries of—
Surveyor.—County surveyors are entitled to compensation only for the days necessarily occupied in the discharge of the duties of that office, under Laws 1889-90, page 302, section 2, which provides that “the county surveyor shall also receive five dollars per day for each day actually engaged in his duties as such officer,” and

under Laws 1895, page 418, section 30, amendatory of the act of 1890, classifying counties and fixing salaries of officers, which provides that all “officers paid a per diem under the provisions of this act shall only be paid for the time actually and necessarily spent in the discharge of their duties”: Sayles v. Walla Walla County, 30 Wash. 194, 70 Pac. 256.

§ 1582. County Officers—Salaries of, in Eighteenth Class.

County auditor, fifteen hundred dollars; county clerk, thirteen hundred and fifty dollars; county treasurer, thirteen hundred and fifty dollars; county attorney, nine hundred dollars; county sheriff, \$1,350; county superintendents of common schools, seven hundred and fifty dollars; county commissioners, four dollars per day; county assessor, four dollars per day; county surveyor, five dollars per day; county coroner, such fees as are allowed by law. [Amendment, approved Mar. 18, 1901; L. 1901, p. 273.]

§ 1609. Fees of State and County Officers—Jurors and Witnesses.

The several officers herein named shall collect the fees herein prescribed for their official services:

CLERK OF THE SUPREME COURT.

Upon filing his first paper or record and making an appearance in the supreme court the appellant shall pay to the clerk of said court a docket fee of.....	\$ 5.00
Upon making his appearance in the supreme court, the respondent in any appealed case, shall pay to the clerk a fee of.....	2.00
The applicant or petitioner in any special proceeding in the supreme court, upon making his appearance, shall pay to the clerk thereof a fee of.....	3.00

The respondent in a special proceeding, and each respondent appearing separately therein, at the time of his appearance, shall pay to the clerk a fee of..... 1.00

The foregoing fees shall be all the fees connected with the appeal or special proceeding: Provided, That no fees shall be required to be advanced by the state, or any municipal corporation, or any public officer prosecuting or defending on behalf of such state or municipal corporation.

For filing application, entering admission and issuing certificate to an attorney upon admission to practice..... 20.00

For all services for which no fee is hereinbefore prescribed the clerk of the supreme court shall receive the same fees as are prescribed for clerks of the superior courts for like services.

CLERKS OF THE SUPERIOR COURTS.

The plaintiff, or other party instituting any civil action or proceeding, shall pay, when the case is entered in the court or when the first paper on his part is filed therein, a fee of.....\$ 4.00

The defendant or other adverse party or any one or more of several defendants or other adverse parties, or interveners, appearing separately from the others, shall pay when his or their appearance is entered in the case, or when his or their first appearance is filed therein, a fee of..... 2.00

When no issue of fact is joined in the case and no judgment other than a dismissal or discontinuance, without trial of an issue of fact is rendered, no further fee need be paid.

Where, after an issue of fact has been joined, the cause is dismissed or discontinued without trial of such issue, the party causing such dismissal or discontinuance to be entered shall pay, at the time of the entry thereof, a further fee of..... 1.00

If a judgment other than a dismissal or discontinuance is rendered, the party obtaining the same shall pay, at the time of the entry thereof, a further fee as follows:

- 1. Where the judgment is rendered without the taking of proof of any fact pleaded—
 - (a) If no adverse party has appeared in the case.....\$ 2.00
 - (b) Or if an adverse party has appeared..... 3.00
- 2. Where the judgment is rendered upon proof taken, but without the assessment of damages by a jury, and in a case other than the foreclosure of a lien or mortgage or partition of real estate—
 - (a) If no adverse party has appeared in the case..... 3.00
 - (b) If an adverse party has appeared..... 5.00
- 3. Where the judgment is rendered upon an assessment of damages by a jury, no adverse party having appeared in the case..... 5.00

4. Where the judgment is rendered after an appearance by an adverse party, and a trial by jury, or by the court or a judge, referee or commissioner, in a cause other than the foreclosure of a lien or mortgage, or partition of real estate.....	6.00
5. Where the judgment is rendered in an action for the foreclosure of a lien or mortgage or partition of real estate—	
(a) If no adverse party appeared in the case.....	6.00
(b) If an adverse party has appeared.....	8.00
6. For making a transcript on appeal to the supreme court, or for transcribing the records in any action for any other purpose, 10 cents per folio.	
7. For comparing a transcript on appeal, or transcript of the record in any action where the party has prepared it himself, 5 cents per folio.	
The appellant in appeals from judgments of a justice of the peace, shall at the time of docketing his appeal, pay a docket fee of.....	4.00
The adverse party in appeals from judgment of a justice of the peace at the time of his appearance in the superior court shall pay a fee of	2.00
Other fees shall be charged as are charged in actions originally begun in the superior court.	
For filing an abstract of a judgment entered in the supreme court or of any other superior court of the state or of any United States court held in this state, or a transcript of a judgment of a justice court, a fee of.....	1.00
For taking an affidavit with or without seal.....	.50
For certificate with or without seal.....	.50
For entering a declaration to become a citizen of the United States.....	1.50
For entering the final admission of an alien to citizenship and for a certified copy thereof under seal.....	3.00
For filing all instruments required by law to be filed in his office, where no other fee is provided.....	.10
For filing and recording marriage certificates, the same to be collected as provided by law.....	1.00
For approving bond, including justification thereon, in other than civil actions and probate proceedings.....	.50
<i>Probate</i> In probate proceedings the party instituting such proceedings shall pay, at the time of the filing of the first paper therein, a fee of.....	5.00
If the amount of the estate as shown by the appraisement thereof returned in the court, is less than the sum of one thousand dollars, no further fee need be paid. If the amount of the estate as shown by such appraisement is one thousand dollars or more and less than two thousand dollars, an additional fee shall be paid when the appraisement is filed of.....	2.50
If the amount of the estate as shown by such appraisement is two thousand dollars or more and less than three thousand dollars, there shall be paid at the time of filing appraisement an additional fee of.	5.00

If the amount of the estate as shown by such appraisement is three thousand dollars or more and less than ten thousand dollars, there shall be paid at the time of filing appraisement an additional fee of....	10.00
If the amount of the estate as shown by such appraisement is five thousand dollars or more and less than ten thousand dollars, there shall be paid at the time of filing the appraisement an additional fee of..	20.00
If the amount of the estate as shown by such appraisement is ten thousand dollars or more and less than twenty thousand dollars, there shall be paid at the time of the filing of the appraisement an additional fee of.....	75.00
If the amount of the estate as shown by such appraisement is twenty thousand dollars or more and less than fifty thousand dollars, there shall be paid at the time of filing the appraisement an additional fee of	75.00
If the amount of the estate as shown by such appraisement, is fifty thousand dollars or more and less than one hundred thousand dollars, there shall be paid at the time of the filing of the appraisement an additional fee of.....	125.00
If the value of the estate exceeds one hundred thousand dollars as determined by such appraisement, there shall be paid at the time of filing such appraisement, in addition to the one hundred and twenty-five dollars just provided for, fifty dollars for each additional twenty thousand dollars valuation thereof above one hundred thousand dollars.	
Should the clerk or prosecuting attorney believe that an estate has been appraised at too low a valuation, it shall be the duty of the prosecuting attorney to apply to the court for an ascertainment of the valuation of the estate and a taxation of fees to correspond thereto. Should the court find the valuation of the estate at the time of the appraisement was greater by ten per centum than the appraisement returned, the costs of the reappraisement shall be paid by the executor or administrator from the funds of the estate; otherwise no costs shall be taxed.	
For filing any petition to contest a will admitted to probate, or to prove a will which has been rejected and for all other services in connection with such petition, subsequent to its filing and up to final settlement of the issues raised by such petition, to be paid at the time of filing such petition a fee of.....	25.00

Contest of will.

SHERIFF'S FEES.

For service of each summons and complaint, and return thereon, on each defendant, besides mileage.....	.60
For making a return of not found in the county upon a summons, besides mileage actually traveled.....	.30
For levying each writ of attachment or writ of execution upon real or personal property, besides mileage.....	.60

For serving writ of possession or restitution without aid of the county, besides mileage	1.50
For serving writ of possession or restitution, with aid of the county, besides mileage	2.00
For service and return of subpoena, upon each person served, besides mileage25
For summoning each juror, in a justice of the peace court, besides mileage25
For serving an arrest warrant in a civil action or proceeding, besides mileage80
For serving or executing any other writ or process in a civil action or proceeding, besides mileage.....	.60
For taking and approving any bond, in a civil action or proceeding, required by law to be taken or approved by him, except indemnity bonds50
For posting each notice, besides mileage.....	.25
For each mile actually and necessarily traveled by him in going to or returning from any place of service.....	.10
For making a deed to land sold upon execution or order of sale, or other decree of court, to be paid by the purchaser.....	3.00
For making copy of any complaint, notice, writ or process, necessary to complete service, per folio ten cents: Provided, That he shall not be required to make any certified copy for a fee of less than.....	1.00

CONSTABLE'S FEES.

For serving an arrest warrant in a criminal action, or making an arrest in cases where an arrest may be lawfully made without a warrant, besides mileage	2.00
For other services he shall receive the same fees and mileage as is paid to a sheriff for like services.	

COUNTY AUDITORS.

For filing each instrument, other than chattel mortgages and conditional sale contracts10
For filing each chattel mortgage and conditional sale contract and entering the same as required by law.....	.25
For indexing each instrument, except chattel mortgages and conditional sale contracts, for the first two names.....	.05
For each additional name.....	.05
For a marginal release of mortgage.....	.25
For release of chattel mortgage or conditional sale contract.....	.25
Making certified copy of instrument besides certificate and seal, per folio10
For comparing instrument prepared by another, besides certificate and seal, per folio05

For certificate and seal.....	.50
For recording each instrument, per folio.....	.15
For administering an oath or taking an affidavit, with or without seal...	.50
For issuing miscellaneous license and entering of record.....	1.00
For issuing marriage licenses, including fee of \$1.00 for county clerk...	5.00
For recording plats, 25 cents for each lot and one dollar for each acknowledgment, dedication or description, with a minimum fee of one dollar for each plat.	
For searching records, per hour.....	1.00
For filing, recording and indexing cattle brands and marks, for each mark and brand described.....	1.00
For filing, recording and indexing brands of loggers, for each brand described	1.00
For filing and recording statement and oath in regard to sires under section 3442 of Ballinger's Codes and Statutes of the State of Washington, the same fees per folio as are paid for other instruments.	
For each certificate issued under the provisions of section 3443 of said Ballinger's Codes and Statutes of the State of Washington, in regard to sires50
For sealing weights and measures, for each weight and measure sealed..	.10

CORONERS.

For each inquest held, besides mileage.....	10.00
For issuing a venire.....	1.00
For drawing all necessary writings, per folio.....	.10
For mileage each way, per mile.....	.10
For performing the duties of a sheriff he shall receive the same fees as a sheriff would receive for the same service.	

JURORS.

Each grand and petit juror shall receive for each day's attendance upon the superior court, besides mileage.....	3.00
Each talesman serving in the superior court, per day.....	2.00
For each day's attendance upon a justice of the peace court.....	1.00
For serving on a coroner's jury, per day.....	2.00
Mileage, each way, per mile.....	.10

WITNESSES.

Witnesses shall receive for each day's attendance in all courts of this state, besides mileage at ten cents per mile each way.....	2.00
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FEES OF SECRETARY OF STATE.

1. For a copy of any law, resolution, record or other document or paper on file in his office, fifteen cents per folio; provided, no copy shall be furnished by the secretary of state unless under the seal of the state.
2. For any certificate under seal of state, two dollars.
3. For recording articles of incorporation, fifteen cents per folio.
4. For filing and recording trademark, five dollars.
5. For each deed or patent of land issued by the governor, if for one hundred and sixty acres of land, or less, one dollar, and for each additional one hundred and sixty acres, or fraction thereof, one dollar.
6. For recording miscellaneous records, papers or other documents, ten cents per folio, and five dollars for filing in each case. But no member of the legislature, state office, judge of the supreme or superior courts, shall be charged for any search relative to matters pertaining to the duties of their offices; nor must they be charged for a certified copy of any law or resolution passed by the legislature relative to their official duties; provided, such law has not been published as a state law. All fees herein enumerated must be collected in advance.

NOTARIES PUBLIC.

1. Protest of a bill of exchange of (or) promissory note.....	\$ 1.00
2. Attesting any instrument of writing with or without seal.....	.50
2. Taking acknowledgment, two persons, with seal.....	.50
4. Taking acknowledgment, each person over two.....	.25
5. Certifying affidavit, with or without seal.....	.50
6. Registering protest of bill of exchange or promissory note for non-acceptance or nonpayment.....	.50
7. Being present at demand, tender or deposit, and noting the same, besides mileage at the rate of ten cents per mile.....	.50
8. Noting a bill of exchange or promissory note, for nonacceptance or nonpayment.....	.50
9. For copying any instrument or record, besides certificate and seal, per folio.....	.15

All officers enumerated in this section, who are paid a salary in lieu of fees, shall collect the fees herein prescribed for the use of the state or county, as the case may be, and shall pay the same into the state or county treasury, as the case may be, on the first Monday of each month: Provided, The fees of the clerk of the superior court prescribed for probate proceedings shall not apply to probate proceedings begun prior to the taking effect of this act but such proceedings shall be governed by the schedule of fees now in force.

An act of the legislature of the state of Washington entitled "An act in relation to the fees of State and county officers, witnesses and jurors, and amending section 2086 of the code of Washington of 1881," approved March 15, 1893, and all other acts and parts of acts in conflict herewith are hereby repealed. [Amendment, approved Mar. 16, 1903; L. 1903, p. 290.]

§ 1609. Fees—Jurors.—Under the statute allowing jurors a certain per diem for each day's attendance on a court of record, jurors are not entitled to compensation for Saturdays, where the court has excused them from Friday evening until Monday morning, for the purpose of hearing motions, although such jurors could not have known prior to Friday evening whether or not they would be called for jury duty the following day, and those jurors living at a distance were unable to reach home and return during the time for which they were excused and were therefore compelled to remain in town even if not on jury duty: *State ex rel. Hastie v. Lamping*, 25 Wash. 278, 65 Pac. 537.

Fees—Clerk of superior court, probate jurisdiction.—The clerk of the superior court has no authority to examine the accounts offered for filing by the guardian of an insane person and collect a fee therefor, under Laws 1893, page 421, section 1, subdivision 27, since such duty is by the Code of Procedure, section 845, imposed on the judge of the superior court: *Denny v. Holloway*, 17 Wash. 487, 49 Pac. 1073.

Witness—Mileage.—A witness from outside the state, who attends a trial for the purpose of testifying in the case, is entitled to mileage within the borders of the state: *Carlson v. Van De Vanter*, 19 Wash. 32, 52 Pac. 323.

§ 1626. Public Officers not Allowed Witness Fees, When.

That no state, county, municipal or other public officer within the state of Washington, who receives from the state, or from any county or municipality therein, a fixed and stated salary as compensation for services rendered as such public officer, shall be allowed or paid any per diem for attending or testifying on behalf of the state of Washington or any county, or municipality therein, at any trial or other judicial proceeding, in any state, county or municipal court within this state; nor shall such officer, in any case, be allowed nor paid any per diem, for attending or testifying in any state or municipal court of this state, in regard to matters and information that have come to his knowledge in connection with and as a result of the performance of his duties as a public officer as aforesaid: Provided, That if a public officer be subpoenaed and required to appear or testify in judicial proceeding in a county other than that in which he resides, then said public officer shall be entitled to receive per diem and mileage as provided by statute in other cases. [Approved Mar. 16, 1901; L. 1901, p. 212.]

§ 1626a. Public Officers not Allowed Witness Fees, When.

That no state, county, municipal or other public officer within the state of Washington, who receives from the state, or from any county or municipality therein, a fixed and stated salary as compensation for services rendered as such public officer, shall be allowed or paid any per diem for attending or testifying on behalf of the state of Washington, or any county or municipality therein, at any trial or other judicial proceeding, in any state, county or municipal court within this state; nor shall such officer, in any case, be allowed nor paid any per diem for attending or testifying in any state or municipal court of this state, in regard to matters and information that have come to his knowledge in connection with and as a result of the performance of his duties as a public officer as aforesaid: Provided, this act shall not apply when any deduction shall be made from the regular salary of such officer by reason of his being in attendance upon the superior court, but in such cases regular witness fees shall be paid; and further, that if a public officer be subpoenaed and required to appear or testify in judicial proceedings in a county other than that in which he re-

sides, then said public officer shall be entitled to receive per diem and mileage as provided by statute in other cases; and, provided further, that this act shall not apply to police officers when called as witnesses in the superior courts during hours when they are off duty as such officers. [Approved Feb. 17, 1903; L. 1903, p. 10.]

§ 1646. Salaries—Justice of the peace—Payment of.—The fact that a claimant for salary as a justice of the peace has failed to comply with the provisions of General Statutes, section 3039 (Ballinger's Code, § 1646), which provide that the auditor shall not draw the salary warrant until the justice shall first have filed the treasurer's duplicate receipt with the

auditor, showing that the justice has made the statement and settlement for the month of the fees collected by him, would not excuse the auditor from drawing his warrant in favor of the claimant when his right thereto has been adjudicated by the superior court: *State v. Headlee*, 18 Wash. 220, 51 Pac. 369.

§ 1655. Taxation—Property Subject to.

All property within the jurisdiction of this state, and any interest therein, whether belonging to the inhabitants of this state or not, and whether tangible or intangible, which shall pass by will or by the statutes of inheritance of this or any other state, or by deed, grant, sale or gift made or intended to take effect in possession or in enjoyment after the death of the grantor or donor to any person in trust or otherwise, shall, for the use of the state, be subject to a tax as provided for in section two of this act, after the payment of all debts owing by the decedent at the time of his death, the local and state taxes due from the estate prior to his death, and a reasonable sum for funeral expenses, court costs, including cost of appraisement made for the purpose of assessing the inheritance tax, the statutory fees of executors, administrators or trustees, and no other sum, but said debts shall not be deducted unless the same are allowed or established within the time provided by law, unless otherwise ordered by the judge or court of the proper county and all administrators, executors and trustees, and any such grantee under a conveyance, and any such donee under a gift, made during the grantor's or donor's life, shall be respectively liable for all such taxes to be paid by them, with lawful interest until the same shall have been paid. The inheritance tax shall be and remain a lien on such estate from the death of the decedent until paid.

Inheritance Tax.

The inheritance tax shall be and is to be levied on all estates subject to the operation of this act on all sums above the first \$10,000, where the same shall pass to or for the use of the father, mother, husband, wife, lineal descendant, adopted child, or the lineal descendant of an adopted child, one (1) per centum. On all sums not exceeding the first fifty thousand dollars, of three per centum, where such estate passes to collateral heirs to and including the third degree of relationship, and to six per cent where such estates pass to collateral heirs beyond the third degree or to strangers to the blood. On all sums above the first fifty thousand dollars and not exceeding the first one hundred thousand dollars, four and one-half per centum to collateral heirs to and including the third degree, and nine per centum to collateral heirs beyond the third degree or to strangers to the blood. And on all sums in excess of the first one hun-

cred thousand dollars the tax shall be six per centum to collateral heirs to and including the third degree, and twelve per centum to collateral heirs beyond the third degree or to strangers to the blood.

Property Included in the Act.

Except as to the limitations prescribed in section 2 from the inheritance tax and real property located outside the state passing in fee from the decedent owner, the tax imposed under section two shall hereafter be assessed against and be collected from property of every kind, which, at the death of the decedent owner is subject to, or thereafter, for the purpose of distribution, is brought into this state and becomes subject to the jurisdiction of the courts of this state for distribution purposes, or which was owned by any decedent domiciled within the state at the time of the death of such decedent, even though the property of said decedent so domiciled was situated outside of the state.

Rule for Valuation.

In case of any property belonging to a foreign estate, which estate, in whole or in part, is liable to pay a collateral inheritance tax in this state, the said tax shall be assessed upon the market value of said property remaining after the payment of such debts and expenses as are chargeable to the property under the laws of this state. In the event that the executor, administrator or trustee of such foreign estate files with the clerk of the court having ancillary jurisdiction and with the State Treasurer duly certified statements exhibiting the true market value of the entire estate of the decedent owner, and the indebtedness for which the said estate has been adjudged liable, which statements shall be duly attested by the judge of the court having original jurisdiction, the beneficiaries of said estate shall then be entitled to have deducted such proportion of the said indebtedness of the decedent from the value of the property as the value of the property within this state bears to the value of the entire estate.

Duties of Executors and Administrators in Relation Thereto.

It shall be the duty of the executor, administrator, or trustee, immediately upon his appointment, to make and file a separate inventory, any will to the contrary notwithstanding, of all the real estate of the decedent liable to such tax, and to cause notice of the lien to be entered as a lis pendens in the office of the county auditor in each county where each particular part of said real estate is situated, and no conveyance of said estate or interest therein, which is subject to such tax before or after the entering of said lien, shall discharge the estate so conveyed from the operation thereof.

As to Real Estate.

All the real estate of the decedent subject to such tax shall, except as hereinafter provided, be appraised within the time provided by law for the appraisal of decedent's estates, and the tax thereon, calculated upon the appraised value after deducting debts for which the estate is liable, shall be paid by the person entitled to said estate within fifteen months from the approval by

the court of such appraisement, unless a longer period is fixed by the court, and in default thereof the court may order the same, or so much thereof as may be necessary to pay such tax, to be sold.

Estates for Life, or Years, to Father, Mother, etc.

When any person shall devise any real property to or for the use of the father, mother, husband, wife, lineal descendant, adopted child, or lineal descendant of such child, during life or for a term of years, and the remainder to a collateral heir or to a stranger to the blood, the court, upon the determination of such estate for life or years, shall, upon its own motion or upon the application of the State Treasurer, cause such estate to be appraised at its then actual market value from which shall be deducted the value of any improvements thereon or betterments thereto, made by the remainderman during the time of the prior estate, to be ascertained and determined by the appraiser and the tax on the remainder shall be paid by such remainderman within six months from the approval of the court of the report of the appraisers. If such tax is not paid within said time, the court may then order said real estate, or so much thereof as may be necessary to pay said tax, to be sold.

Estate for Life or Years to Other than Father, Mother, etc.

Whenever any real estate of a decedent shall be subject to such tax, and there be a life estate or interest for a term of years given to a party other than the father, mother, husband, wife, lineal descendant, adopted child, or lineal descendant of such child, and the remainder to a collateral heir or stranger to the blood, the court shall direct the interest of the life estate or term of years to be appraised at the actual value thereof according to the rules or standards of mortality and of value commonly used in actuaries' combined experience tables. The state treasurer is directed to obtain and publish for the use of the courts and appraisers throughout the state, tables showing the average expectancy of life, and the value of annuities or life and term estates, and the present worth or value of remainders and reversions. The taxable value of life or term, deferred or future estates, shall be computed at the rate of four per cent per annum interest. Whenever it is desired to remove the lien of the inheritance tax on remainders, reversions or deferred estates, parties owning the beneficial interest may pay at any time the said tax on the present worth of such interest determined according to the rules herein fixed. Upon the approval of such appraisement by the court, the party entitled to such life estate or term of years, shall within sixty days thereafter pay the tax on such life or term estate, and in default thereof the court may order such interest in such estate or so much thereof as shall be necessary to pay such tax, to be sold. Upon the determination of such life estate or term of years, unless the tax on the remainder shall have been previously paid, as provided in this section, the same provision shall apply as to the ascertainment of the amount of the tax and the collection of the same on the real estate in remainder as in like cases is provided in the preceding section. Whenever any personal estate of a decedent shall be subject to such tax, and there be a life estate or interest for a term of years given, the court shall inquire into and determine the value of the life estate or interest

for the term of years, and order and direct the amount of the tax thereon, to be paid by the prior estate, and that to be paid by the remainderman, each of whom shall pay their proportion of such tax within six months from such determination, unless a longer period is fixed by the court, and in default thereof the executor, administrator or trustee shall pay the tax out of said property, as the court may direct.

Devise to Executors or Trustees in Lieu of Fees.

Whenever a decedent appoints one or more executors or trustees and in lieu of their allowance or commission, makes a bequest or devise of property to them which would otherwise be liable to said tax or appoints them his residuary legatees, and said bequests, devises, or residuary legacies exceed what would be a reasonable compensation for their services, such excess shall be liable to such tax, and the court having jurisdiction of their accounts, upon its own motion, or on the application of the state treasurer, shall fix such compensation.

Whenever any legacies subject to said tax are charged upon or payable out of any real estate, the heir or devisee, before paying the legacies, shall deduct said tax therefrom and pay it to the executor, administrator, trustee or state treasurer, and the same shall remain a charge and be a lien upon said real estate until it is paid; and payment thereof shall be enforced by the executor, administrator, trustee or state treasurer in his name of office, in the same manner as the payment of the legacy itself could be enforced.

Executors, Administrators and Trustees to Deduct Tax.

Every executor, administrator or trustee having in charge or trust any property subject to said tax, and which is made payable by him, shall deduct the tax therefrom, or shall collect the tax thereon from the legatee or person entitled to said property, and he shall not deliver any specific legacy or property subject to said tax to any person until he has collected the tax thereon.

Payable to State Treasurer.

All taxes imposed by this act shall be payable to the state treasurer, and those which are made payable by executors, administrators or trustees shall be paid within fifteen months from the death of the testator or intestate, or within fifteen months from assuming the trust by such trustee, unless a longer period is fixed by the court. All taxes not paid within the time prescribed in this section shall draw interest at the legal rate until paid.

Duties of Appraisers Under the Act.

It shall be the duty of all appraisers appointed under the provisions of this act to forthwith give notice to the state treasurer, and other persons known to be interested in the property to be appraised, of the time and place at which they will appraise such property, which time shall not be less than twenty days from the date of such notice. The notice shall be served in the same manner as is prescribed for the commencement of civil actions unless a different one is ordered by the court or judge, and the notice, with the proof of service thereof, shall be returned to the court with the appraisement. The state treasurer or any person interested in the estate appraised, may file exceptions to the

appraisement, which shall be heard and determined by the court having jurisdiction in probate of the estate involved. If, upon the hearing, the court finds the amount at which the property is appraised is its market value and the appraisement was fairly and in good faith made, it shall approve such appraisement; but if it finds that the appraisement was made at a greater or less sum than the market value of the property, or that the same was not fairly or in good faith made, it shall set aside the appraisement and determine such value. The state treasurer, or anyone interested in the property appraised, may appeal to the supreme court from the order of the superior court in the premises.

Foreign Executor, Administrator and Trustee Assigning Corporate Stock—Duty of.

If a foreign executor, administrator or trustee shall assign any corporate stock or obligations in this state standing in the name of a decedent, or in trust for a decedent, liable to such tax, the tax shall be paid to the state treasurer on or before the transfer thereof; otherwise, the corporation permitting its stock to be so transferred on its books shall be liable to pay such tax, and it is the duty of the state treasurer to enforce the payment thereof.

Executor, etc., to Furnish Clerk of Court with List of Heirs.

In all of the estates subject to the payment of the inheritance tax it shall be the duty of the executor, administrator or trustee to furnish the clerk of the court a list of the heirs of the estate and to state therein the relationship which each heir, devisee or legatee bears to the decedent. The clerk of the court shall immediately forward a true copy of such list to the state treasurer, and no final settlement of the account of any executor, administrator or trustee shall be accepted or allowed unless a strict compliance with the provisions of this section has been had by such person.

Extension of Time for Filing Appraisement.

Whenever, by reason of the complicated nature of an estate, or by reason of the confused condition of the decedent's affairs, it is [impracticable] for the executor, administrator, trustee or beneficiary of said estate to file with the clerk of the court a full, complete and itemized inventory of the personal assets belonging to the estate, within the time required by statute for filing inventories of the estates, the court may, upon the application of such representatives or parties in interest, extend the time for the filing of the appraisement for a period not to exceed three months beyond the time fixed by law.

State Treasurer may Compromise Tax, When.

Whenever an estate charged, or sought to be charged, with the inheritance tax, is of such a nature, or is so disposed, that the liability of the estate is doubtful, or the value thereof cannot, with reasonable certainty, be ascertained under the provisions of law, the state treasurer may, with the written approval of the attorney general, which approval shall set forth the reasons therefor, compromise with the beneficiaries or representatives of such estates, and compound the tax thereon; but said settlement must be approved by the superior court

§ 1657. Personalty Defined.

Personal property for the purposes of taxation shall be construed to embrace and include, without especially defining and enumerating it, all goods, chattels, moneys, stocks or estates; all improvements upon lands, the fee of which is still vested in the United States, or in the State of Washington, or in any railroad company or corporation, and all and singular of whatsoever kind, name, nature and description, which the law may define or the courts interpret, declare and hold to be personal property, for the purpose of taxation, and as being subject to the laws and under the jurisdiction of the courts of this state, whether the same be any marine craft, as ships and vessels, or other property holden under the laws and jurisdiction of the courts of this state, be the same at home or abroad: *Provided*, That the ships or vessels registered in any custom house of the United States within this state, which ships or vessels are used exclusively in trade between this state and any of the islands, districts, territories, states of the United States, or foreign countries, shall not be listed for the purpose of or subject to taxation in this state, such vessels not being deemed property within this state. All credits including accounts, notes, bonds, certificates of deposit, judgments, choses in action, and all other debts of whatsoever kind and nature, due or to become due (whether secured or not by mortgage or otherwise): *Provided, however*, That in making up the amount of money or credits which any person is required to list or have listed or assessed, he will be entitled to deduct from the gross amount thereof all debts in good faith owing by him, but no acknowledgment not founded on actual consideration, and no such acknowledgment made for the purpose of being so deducted shall be considered a debt within the intent of this section, but no person will be entitled to any deduction on account of any obligation of any kind given to any insurance company for the premiums of insurance, nor on account of any unpaid subscription to any institution, society, corporation or company; and no person shall be entitled to any deduction on account of any indebtedness contracted for the purchase of United States bonds or other non-taxable property: *Provided*, That credits shall be assessed at their true and actual value: *Provided further*, That mortgages and all credits for the purchase of real estate shall not be considered as property for the purposes of this chapter. [L. 1893, p. 323, § 3; L. 1895, p. 508, § 1; L. 1897, p. 136, § 3; L. 1901, p. 3; extraordinary session of 1901.]

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having jurisdiction of the estate, and after such approval, the payment of the amount of the taxes so agreed upon shall discharge the lien against the property of the estate.

Administrators, etc., to Furnish Treasurer with Copies of Reports on Demand.

Administrators, executors and trustees of the estates subject to the inheritance tax shall, when demanded by the state treasurer, send to such treasurer certified copies of such parts of their reports as may be demanded by him, and upon the refusal of said parties to comply with the treasurer's demand, it is the duty of the clerk of the court to comply with such demand, and the expense of making such copies and transcripts shall be charged against the estate, as are other costs in probate. [Approved Mar. 6, 1901; L. 1901, p. 67.]

§ 1655. **Taxation—What is subject to.** Corporate franchises are taxable under the laws of this state: *Edison Electric Co. v. Spokane Co.*, 22 Wash. 168, 60 Pac. 132.

Under Laws 1897, page 136, sections 1, 6, which provide that all real estate shall be subject to taxation upon equalized valuations thereof, fixed with reference thereto on the 1st day of March in each and every year in which the same shall be listed, and that all real estate subject to taxation shall be listed by the assessor each year in the detailed and assessment list, under section 60 of the revenue act of 1897 as amended in 1899, which authorizes the state board of equalization at its annual meeting to raise or lower the valuation of any class of property in any county, the state board has power to change real estate valuations in odd numbered years, although Laws 1897, page 140, section 6, provides that "in each odd numbered year the valuation of each tract [of real estate] for taxation shall be the same as the valuation thereof as equalized by the county board of equalization in the preceding year": *State v. Nichols*, 29 Wash. 160, 69 Pac. 372.

Laws 1901, page 67—Taxation of inheritances held constitutional.—Laws 1901, page 67, providing for the taxation of inheritances is not invalid by reason of exempting some and laying proportional taxes on different ones, since the charges provided for are upon the passing of the estate by succession and are not a tax upon property, and hence do not conflict with article 7, sections 1, 2, 5, of the state constitution, which require all property to be taxed uniformly according to its value in money. The absence in the constitution of specially delegated power to the legislature of this state to enact laws for the taxation of inheritances is not to be construed as a restriction of the right, under the provisions of the Bill of Rights, which declare in article 1, section 1; that "all political power is inherent in the people, and governments derive their just powers from the consent of the gov-

erned," and in article 1, section 30, that "the enumeration in this constitution of certain rights shall not be construed to deny others retained by the people," since legacies and inheritances are but creatures of the law, and natural subjects for legislative control, in the absence of constitutional prohibition. The exemption in the inheritance tax law (Laws 1901, p. 68, § 2) from the provisions of the act of sums below \$10,000 when the estate passes to direct heirs and kindred is not invalid as violating the constitutional requirement of equality in taxation, for the reason that it does not extend the same exemption to devises to collateral heirs or strangers to the blood, since there is no inequality provided among members of the same class, and such rule of equality does not forbid a liberal classification for purposes of taxation: *State v. Clark*, 30 Wash. 439, 71 Pac. 20.

Taxes become a fixed charge, when.—The dissolution of a banking corporation by order of court would not operate as a discharge from liability for taxes assessed against its capital stock, which had become a fixed and primary lien prior to dissolution: *Bramel v. Manring*, 18 Wash. 421, 51 Pac. 1050.

§ 1656. **Realty defined.**—Tide lands held under executory contract of sale from the state being taxable to the holder under the statutes, and Laws 1897, page 136, section 2, providing that improvements shall be assessed together with the land upon which they are located, and not separately, a dock, or wharf and warehouse, located upon tide land held under a valid existing contract of purchase from the state cannot be assessed as personal property: *Gray's Harbor Co. v. Chehalis County*, 23 Wash. 369, 63 Pac. 233.

§ 1657. **Personal property defined—Deductions of debts.**—That part of above section which excepts bank stocks, and includes money as credits, held unconstitutional. Discrimination between national and state bank stock upheld: *Pullman State Bank v. Manring*, 18 Wash. 250, 51 Pac. 464.

A stockholder in a state bank has a right to have his share of the capital stock included in the sum of his credits from which his debts may be deducted in making up his assessment for taxation: *Bramel v. Manring*, 18 Wash. 421, 51 Pac. 1050.

County in which to be listed.—One whose personal property has been listed and made liable to assessment for taxa-

tion in one county with reference to its valuation on the first day of March, as provided by Laws 1897, page 136, sections 1, 6, cannot be made liable to a second tax on a portion of said property by its removal to another county temporarily for purposes of sale under the provisions of Laws 1899, page 295: *Johnston v. Whatcom County*, 27 Wash. 95, 67 Pac. 569.

§ 1659. Taxation—Exemptions From.

All property described in this section, to the extent herein limited, shall be exempt from taxation, that is to say:

First. *All lands used exclusively* for public burying grounds or cemeteries, all churches built and supported by donations whose seats are free to all, and the grounds whereon such churches are built, not exceeding one hundred and twenty feet by two hundred feet in quantity, together with the parsonage thereon: Provided, That such grounds are used wholly for church purposes and not otherwise. Also, all property of Young Men's Christian Associations, which shall be wholly used, or to the extent solely used, for the religious purpose of such association.

Second. *All property*, whether real or personal, belonging exclusively to any school district, county, municipal corporation, the state or to the United States.

Third. *All fire-engines* and other implements used for the extinguishment of fires, with the building used exclusively for the safe keeping thereof, and for the meetings of fire companies, providing that such belongs to any town or fire company organized therein.

Fourth. *All free public libraries*, orphanages, orphan asylums, institutions for the reformation of fallen women, homes for the aged and infirm, and hospitals for the care of the sick, when such institutions are supported in whole or in part by public donations or private charity, and all of the income and profits of such institutions are devoted, after paying the expenses thereof, to the purposes of such institutions, and the grounds, whenever such libraries, orphanages, institutions, homes and hospitals are built and when used exclusively and not otherwise for the purposes in this subdivision enumerated. In order to determine whether such libraries, orphanages, institutions, homes and hospitals are exempt from taxes, within the true intent of this act, the state board of health, the county and city authorities of the county and city wherein such institutions are respectively situated, shall have access to the books of such institutions, and the institution claiming exemption shall provide by its articles of incorporation that the Mayor of the city and the chairman of the board of county commissioners wherein such institution is located shall be ex-officio trustees thereof, and shall be notified of each and every meeting thereof, and shall have the same powers as a trustee of such institution. And the superintendent or manager of the library, orphanage, institution, home or hospital claiming exemption from taxation under this act shall make oath before the assessor that all the income and the receipts thereof, including donations to it,

have been applied to the actual expenses of maintaining it, and to no other purpose. He shall also, under oath, make annual report to the state board of health of its receipts and disbursements, specifying in detail the courses [sources] from which the receipts have been derived, and the object to which disbursements have been applied, and shall further furnish in the said report, full and complete vital statistics for the use and information of the state board of health, who may publish the same in its annual report.

Fifth. *All fruit trees*, except nursery stock and forest trees artificially grown.

Sixth. *All ships, vessels and boats* in actual construction and all materials especially designed and set apart for the construction of any such ship, vessel or boat in process of building within this state, shall be exempt from taxation.

Seventh. *The personal property* of each head of a family liable to assessment and taxation of which such individual is the actual and bona fide owner to an amount of three hundred dollars: Provided, That each person shall list all of his personal property for taxation and the county assessor shall deduct the amount of the exemption authorized by this section from the total amount of the assessment and assess the remainder.

An emergency exists and this act shall take effect and be in force from and after its approval by the governor. [Amended by act of 1899; L. 1899, p. 285; amended by act of 1901; L. 1901, c. 178, p. 379, § 1; amendment, approved Mar. 18, 1903; L. 1903, p. 379, § 1.]

§ 1659. **Exemptions—Constitutional Law.** The provisions of the revenue law of 1897 (Laws 1897, p. 139, § 5, subds. 6, 8) exempting each person from taxation on personal property to an amount not exceeding five hundred dollars, and, also, improvements upon land to a like amount, are in conflict with article 7, sections 1, 2 of the constitution forbidding the exemption of private property from taxation, and are therefore void: *State ex rel. Chamberlin v. Daniel*, 17 Wash. 111, 49 Pac. 243; followed in *Buchanan v. Bauer*, 17 Wash. 688, 49 Pac. 1119.

Laws 1899, page 290, section 6.—Laws 1899, page 290, section 6, is retroactive, as well as prospective in its operation, and the county treasurer is thereby authorized to credit the county current expense fund with all penalties and interest collected on municipal taxes under levies made prior to its enactment; for the reason that the legislature has not imposed upon

municipal corporations the power to impose penalties and interest on unpaid taxes, but has regulated the matter by general laws under its sovereign capacity, and has a right to dispose of the fund arising from such a source: *City of New Whatcom v. Roeder*, 22 Wash. 570, 61 Pac. 767.

By construing together the various revenue laws passed by the legislature from time to time in this state, it is apparent that different meanings were attached to the terms "penalty" and "interest"; and since Laws 1899, page 290, section 6, provides only for interest on delinquent taxes in futuro, it must be presumed that the further provision of the section disposing of collections of penalties and interest on delinquent taxes contemplated a retrospective application of the statute to taxes levied under prior statutes in which such terms had distinct and separate definitions: *Id.*

§ 1659a. Exempting School and College Property.

There shall be exempted from taxation in the state of Washington all property, real and personal, owned by any school or college in this state, supported in whole or in part by gifts, endowments or charity, the entire income or revenue of which said school or college, after paying the expenses thereof, is devoted to the purposes of such institution, and which is open to all persons upon equal terms: Provided, That said property be used solely for educational purposes (or the revenue therefrom be devoted exclusively to the support and

maintenance of such institution): And provided, further, That the real estate so exempted shall not exceed ten acres in extent and shall be used exclusively for college or campus purposes: And provided further, That real estate owned or controlled by such institutions and leased and rented by them for the purpose of deriving revenue therefrom shall not be exempted from taxation under the provisions of this act: Provided further, That the annual income from such endowments is equal to or exceeds all incomes from tuitions received by such institution.

Conditions Precedent Thereto.

Before any exemption provided for by this act shall be allowed for any year, the institution claiming such exemption shall file with the county assessor of the county wherein such property is situated and subject to taxation, on or before the first day of March in each year, a statement verified by the oath of the president, treasurer, or other proper officer of such institution, containing a list of all property claimed to be exempt, the purpose for which the same is used, the revenue derived from the same for the preceding year, the use to which such revenue was applied, the number of students in attendance at such school or college, and the total revenues of the same with the source from which the same was derived, and the purposes to which such revenues were applied, giving the items of such revenues and expenditures in detail. The county assessor of the county wherein such property is subject to taxation and such exemption is claimed, shall at all times have access to the books and records of such institution in order to determine whether any property claimed to be exempt from taxation should be exempted under the provisions of this act. [Filed without approval Mar. 20, 1903; L. 1903, p. 388.]

§ 1659b. Remission of Unpaid Taxes of Charitable Institutions, and Penalties on.

That all unpaid taxes with penalty and interest thereon, for the year 1890, and thereafter to and including the year 1898, except where certificates have been issued to purchasers, other than the county at sales for said unpaid taxes, penalty and interest, be remitted wherever the same has been levied and assessed, and is now delinquent and unpaid, upon all orphanages, orphan asylums, institutions for the reformation of fallen women, homes for the aged and infirm, and hospitals for the care of the sick, when such institutions are supported in whole by public appropriations or by private charity, or are supported in part by charity, and all of the income and profits of such institutions devoted to charitable purposes after paying the expenses thereof; and the grounds whereon such institutions are built when used exclusively for the purpose herein enumerated: Provided, Said orphanages, asylums, institutions and hospitals shall, at all times since the levy of taxes for the year 1895, have complied with all the requirements of law entitling them to be exempt from such assessment and levy. [Approved Mar. 6, 1899; L. 1899, p. 50.]

§ 1661. Removal From County—Taxation of—How.

If any person, firm or corporation shall remove from one county to another in this state personal property which has been assessed in the former county for

a tax which is unpaid at the time of such removal, the treasurer of the county from which the property is removed shall certify to the treasurer of the county to which the property has been removed a statement of the tax together with all delinquencies and penalties.

County Treasurer to Certify to.

The treasurer of any county of this state shall have the power to certify a statement of taxes and delinquencies of any person, firm, company or corporation, or of any tax on personal property together with all penalties and delinquencies, which statement shall be under seal and contain a transcript of the warrant of collection and so much of the tax roll as shall affect the person, firm, company or corporation or personal property to the treasurer of any other county of this state, wherein any such person, firm, company or corporation has any real or personal property.

Duty of County Treasurer Receiving Certificate.

The treasurer of any county of this state receiving the certified statement provided for in sections one and two of this act, shall have the same power to collect the taxes, penalties and delinquencies so certified as he has to collect the personal taxes levied on personal property in his own county, and as soon as the said taxes are collected they shall be remitted, less the cost of collecting same, to the treasurer of the county to which said taxes belong, by the treasurer collecting them, and he shall return a certified copy of the certified statement to the auditor of the county to which the taxes belong, together with a certified statement of the amount remitted to the said treasurer. [Approved Mar. 6, 1899; L. 1899, p. 43.]

§ 1662. Taxation of migratory stock—Constitutionality of act—Authority of sheriff to collect assessment.—The “migratory stock act” (Laws 1895, p. 105), providing for the assessment and collection of taxes on stock brought into the state after the first day of April in any year, is not unconstitutional on the ground of making a distinction between different kinds of personal property for purposes of taxation. It is competent for the state to direct the method by which taxes are collected, and no constitutional right is invaded by an act which authorizes the sheriff to collect taxes levied upon migratory stock without a written authority from the assessor: *Wright v. Stinson*, 16 Wash. 368, 47 Pac. 761.

§ 1664. Personal property of a decedent, which by the terms of his will has passed into the hands of trustees for the purpose of administration, is taxable in the domicile of the trustees and not in the locality of the death of the decedent: *Walla Walla v. Moore*, 16 Wash. 339, 58 Am. St. Rep. 31, 47 Pac. 753.

§ 1665. Personalty — Where listed.—Section 9 of the act of March 15, 1893 (Laws 1893, p. 327), must be construed in connection with other sections of the same act which require corporeal personal property to be assessed in the school district and road district in which it is ac-

tually situated at the time the assessment is made, and hence a milling corporation which has its office and part of its personal property within the corporate boundaries of a town cannot be assessed for municipal taxation upon its corporeal personal property which is situated just beyond the corporate limits of the municipality: *Northwestern Lumber Co. v. Chehalis County*, 24 Wash. 626, 64 Pac. 787.

§ 1666. Registered Vessels.—Ocean-going tugs, though registered at foreign port and owned by a foreign corporation, are taxable under the laws of this state, when their situs is actually in this state: *Northwestern Lumber Co. v. Chehalis County*, 25 Wash. 95, 87 Am. St. Rep. 747, 64 Pac. 909.

§ 1671. Capital stock—Deductions of.—Where the statutes provide for a method of taxation upon the shares of capital stock of banking institutions, and provide further for the taxation of their real and personal property at the same rate at which other moneyed capital in the hands of citizens is assessed, a bank is not entitled to deduct from the valuation of its capital stock the value of the shares of stock held by it in other corporations located and taxed within the state, although the ownership of such other corporate stock may enter into and contribute to the value of the bank's capital stock:

Pacific Nat. Bank v. Pierce County, 20 Wash. 675, 56 Pac. 936.

A national bank is not entitled to deduct, for the purposes of taxation, from the value of its capital stock, the value of stocks in other corporations acquired by it in the course of business, although such other corporations are located within and taxed by the state, under the Revised Statutes of the United States, section 5219,

providing that taxation of such banks shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of the state, since there is no discrimination between the individual shareholder of a national bank, when taxed upon his shares as on other personal property, and the individual citizen, who is by the statute taxed upon all personal property owned by him: *Id.*

§ 1677. Taxation—Bank Stock.

All the shares of stock in banks, whether of issue or not, existing by authority of the United States, or of the state, and located within the state, shall be assessed to the owners thereof in the cities or towns where such banks are located, and not elsewhere, in the assessment of all state, county and municipal taxes imposed and levied in such place, whether such owner is a resident of said city or town or not; all such shares shall be assessed at their full and fair value in money on the first day of March in each year, after deducting from the capital of said bank the actual portion thereof invested in real estate, which real estate shall be assessed and taxed as other real estate is assessed and taxed under this act, but such value shall not exceed the paid up capital, surplus and undivided profits as shown by the books of the banks. And the persons or corporations who appear from the records of the banks to be owners of shares at the close of the business day next preceding the first day of March in each year, shall be taken and deemed to be the owners thereof for the purposes of this section.

An emergency exists and this act shall take effect immediately. [Amendment, approved Mar. 12, 1903; L. 1903, p. 123.]

§ 1677. **Taxation—Bank shares.**—The shares of nonresident stockholders in a bank incorporated under the laws of this state and doing business in the state are subject to taxation here for state, county and municipal purposes, under Laws 1893, page 323, which provides in section 1 that all real and personal property in the state shall be subject to assessment and taxation, and in section 21, that all the shares of stock in banks, existing by authority of the United States or of the state and located within the state shall be assessed to the owners thereof in the cities or towns where such banks are located: *Scandinavian Bank v. Pierce County*, 20 Wash. 155, 55 Pac. 40.

Domestic, exempt.—All the property of domestic corporations in this state, other than banking, being assessable for taxation as the property of the corporation itself, the shares of stock therein held by individual shareholders cannot be assessed against them personally: *Ridpath v. Spokane County*, 23 Wash. 436, 63 Pac. 261.

§ 1682. **State lands held under contract taxed to holder.**—A purchaser of state lands, holding the same under an executory contract until certain conditions are complied with, the title meanwhile remaining in the state, must pay the taxes

thereon, under Laws 1893, page 335, section 6, which provides that state, county or municipal lands, held under a contract for the purchase thereof, shall be considered, for all purposes of taxation, as the property of the person so holding the same: *Washington Iron Works Co. v. King County*, 20 Wash. 150, 54 Pac. 1004.

The interest of the contractor for the purchase of state school lands, where the contract of sale has been subsequently canceled for nonpayment of installments of purchase price due, can be charged with taxes; and the state's right to the purchase price, or its right to forfeit the contract for nonpayment thereof, cannot be divested by a tax sale of such lands: *State v. Frost*, 25 Wash. 135, 64 Pac. 902.

§ 1698. **Taxation—True valuation.**—Under Ballinger's Code, section 1698, which provides that "in valuing any real property on which there is a coal or other mine, or stone or other quarry, the same shall be valued at such a price as such property, including the mine or quarry, would sell at a fair, voluntary sale for cash," it was proper for the assessor to value as part of the real estate of mining property improvements thereon consisting of tunnels running through the land for mining purposes and buildings upon the

land for use in connection with the operation of the mine: *Eureka Min. Co. v. Ferry County*, 28 Wash. 251, 68 Pac. 727.

Such provision is not a violation of article 7, sections 2, 3, of the constitution, which require uniformity in the rate of taxation, and that the same methods shall be employed for assessing corporate property as are provided for assessing individual property: *Id.*

The fact that Ballinger's Code, section 1698, makes the rule for valuing mining property at the price which it would bring at "a fair, voluntary sale for cash," while the rule for other property is stated

to be the "value at which the property would be taken in payment of a just debt from a solvent debtor," would not violate the constitutional requirement (art. 7, § 2) of uniformity in the rate of taxation on all property according to its value: *Id.*

The method employed by the assessor in getting at the valuation of mining property fixed by him in his assessment is immaterial, if in fact the conclusion arrived at was the result of his honest judgment as to its value, considered with reference to the property itself, after an examination thereof: *Id.*

§ 1699. Realty—How Listed.

The assessor shall list all real property according to the largest legal subdivision as near as practicable. The assessor shall make out in the plat and description book in numerical order a complete list of all lands or lots subject to taxation, showing the names and owners, if to him known, and if unknown, so stated; the number of acres and lots or parts of lots included in each description of property and the value per acre or lot: Provided, That the assessor shall give to each tract of land where described by metes and bounds a number, to be designated as 'Tax No. . . . which said number shall be placed on the tax rolls to indicate that certain piece of real estate bearing such number, and described by metes and bounds in the plat and description book herein mentioned, and it shall not be necessary to enter a description by metes and bounds on the tax roll of the county, and the assessor's plat and description book shall be kept as a part of the tax collector's record: And provided further, That the board of county commissioners of any county may by order direct that the property be listed numerically according to lots and blocks or section, township and range, in the smallest platted or government subdivision, and when so listed the value of each block, lot or tract, the value of the improvements thereon and the total value thereof, including improvements thereon, shall be extended after the description of each lot, block or tract, which last extension shall be in the column headed "Total value of each tract, lot or block of land assessed with improvements as returned by the assessor." In carrying the values of said property into the column representing the equalized value thereof, the county auditor shall include and carry over in one item the equalized valuation of all lots in one block, or land in one section, listed consecutively, which belong to any one person, firm or corporation, and are situated within the same road or school district or municipal corporation, and in the assessed value of which the county board of equalization has made no change. Where assessed valuation are changed, the equalized valuation must be extended and shown by item. The detail and assessment lists and blanks shall be in readiness for delivery to the assessors on the third Monday of January of each year.

An emergency exists and this act shall take effect immediately. [Amendment, approved Mar. 6, 1899; L. 1899, p. 287; Mar. 6, 1901; L. 1901, p. 167.]

§ 1699a: Irregular Subdivisions, How Listed.

In all cases of irregular subdivided tracts or lots of land other than any regular government subdivision the county assessor shall outline a plat of such tracts or lots and notify the owner or owners thereof with a request to have the same surveyed by the county surveyor, and cause the same to be platted into numbered (or lettered) lots or tracts: Provided, however, That where any county has in its possession the correct field notes of any such tract or lot of land a new survey shall not be necessary, but such tracts may be mapped from such field notes.

Commissioners may Order Survey, if Owner Neglects to.

In case the owner of such tracts or lots neglect or refuse to have the same surveyed or platted, the county assessor shall notify the board of county commissioners in and for the county, who may order and direct the county surveyor to make the proper survey and plat of the tracts and lots.

Plat of Survey to be Made and Recorded.

A plat shall be made on which said tracts or lots of land shall be accurately described by lines, and numbered (or lettered) which numbers (or letters) together with number of the section, township and range shall be distinctly marked on such plat, and the field notes of all such tracts or lots of land shall describe each tract or lot according to the survey, and such tract or lot shall be numbered (or lettered) to correspond with its number (or letter) on the map. The plat shall be given a designated name by the surveyor thereof. When the survey, plat, field notes and name of plat, shall have been approved by the board of county commissioners, the plat and field notes shall be filed and recorded in the office of the county auditor, and the description of any tract or lot of land described in said plats by number (or letter) section, township and range, shall be a sufficient and legal description for revenue and all other purposes. [Approved Mar. 16, 1901; L. 1901, p. 265.]

§ 1699. Arbitrary Valuation.—Under the revenue act of 1893, an assessment of real estate for taxation, made arbitrarily and without regard to the actual, true and fair value thereof, is illegal; and no more than the just and proportionate amount of the taxes due thereon can be recovered in an action to enforce collection, even if such taxes have been equalized by a board of equalization (*Olympia Water Works v. Thurston County*, 14 Wash. 268, 44 Pac. 267, distinguished): *Knapp v. King County*, 17 Wash. 567, 50 Pac. 480.

Listing by assessor.—The act of the assessor in describing certain property upon the assessment rolls, listed to a given property owner as "fractional lots 3 and 6" in a certain named city addition, would not invalidate the assessment as misleading, though the property owner's lots were full and not fractional: *Noyes v. County of King*, 18 Wash. 417, 51 Pac. 1052.

Under Ballinger's Code, section 1699, which provides that the assessor shall list all property according to the largest legal subdivision, as near as practicable, unless otherwise ordered by the board of county commissioners, it was not error to list a group of mining claims as a consolidated claim, according to the government description, when no order had been made by said board directing the property to be listed by smaller legal subdivisions: *Eureka Min. Co. v. Ferry County*, 28 Wash. 251, 68 Pac. 727.

§ 1710. Power of assessor.—After the assessor has returned his assessment and filed the lists and books with the clerk of the board of equalization, verified by his affidavit, he has no further power to make any corrections therein or addition thereto: *Lewis v. Bishop*, 19 Wash. 313, 53 Pac. 165.

§ 1714. Equalization—Notice to property owner.—Notice from the board of equalization to a shareholder of the capital stock of a bank of a proposed raise in the value of his assessment is not necessary, since notice to the bank is sufficient for that purpose, under the provisions of Ballinger's Code, sections 1677-1680, which constitute the bank the general agent of the shareholder: *Ladd v. Gilson*, 26 Wash. 79, 66 Pac. 126.

Where a bank appears before the board of equalization, pursuant to a notice requesting it to "show cause, if any, why your personal assessment for the year 1900 should not be raised," and, without any objection to the form of the notice, is fully heard upon the subject of an increase in the valuation of the shares of its capital stock, none of its shareholders can complain that the notice given was not notice of an intention to raise the valuation upon the shares of stock of the bank: *Id.*

Where the notice required by Ballinger's Code, section 1714, to be given a property owner of a proposed increase by the board of equalization in his assessment is sent by mail, such notice is governed by Ballinger's Code, section 4891: *Everett Water Co. v. Flemming*, 26 Wash. 364, 67 Pac. 82.

A notice requiring the property owner to appear before the board "within five days from the date of this notice" is insufficient: *Id.*

The fact that the board of equalization does not act upon a property owner's assessment until more than five days have elapsed after notice to him would not cure the service of inadequate notice upon him, since the statute contemplates a notice to the property owner with a date certain, fixed for his appearance more than five days after the service of the notice: *Id.*

Equalization conclusive, when.—Where there is not sufficient irregularity in the manner of assessing improvements on tide lands to render the assessment void, the valuation made by the assessor and approved by the board of equalization is conclusive: *Noyes v. King County*, 18 Wash. 417, 51 Pac. 1052.

The action of the assessor and of the county board of equalization as to assessments upon personal property is final in the absence of fraud or malice on their part: *Baker v. County of King*, 17 Wash. 622, 50 Pac. 481.

Under Laws 1897, page 162, section 58, a board of equalization has no power to increase the valuation of real property, unless at least five days' notice shall have been given in writing to the owner or agent. When the notice required by section 58 (Ballinger's Code, p. 1714) is given by mail, the owner of real property affected by the proposed increase in valuation is entitled to ten days' notice, under Laws 1893, page 414, section 21 (Ballinger's Code, § 4891), which provides that in case of service by mail the time of service shall be double that required in a case of personal service: *Lewis v. Bishop*, 19 Wash. 313, 53 Pac. 165.

Where the statute requires notice to a property owner of a proposed increase in the valuation of his property for taxation, an increase without notice is void, even though the conclusion of the board may be fair and in accordance with substantial justice: *Id.*

Where the owner of property appears before a board of equalization to be heard respecting the valuation of his property fixed by the assessor, and raises no objection to the manner in which the board is constituted, he cannot subsequently make a collateral attack in another proceeding upon the composition of the board: *Commercial Electric etc. Co. v. Judson*, 21 Wash. 49, 56 Pac. 829.

The law having confided to the taxing officers authority to determine values, it is only when such officers act maliciously or fraudulently, or without affording the property owner an opportunity to be heard, that their conclusion as to values will be disturbed. Where a board of equalization has received all the evidence offered by a property owner complaining of an assessment, it cannot be held to have arbitrarily refused to receive testimony from the fact that an offer on the part of the plaintiff to have one of its officers sworn was not passed upon by the board, when such officer was permitted to present his views along with others on the value of the property assessed: *Edison Electric Co. v. Spokane Co.*, 22 Wash. 168, 60 Pac. 132.

The failure of plaintiff to go before the board of equalization and secure a reduction of its assessment is not ground for refusing it relief, when the assessment was fraudulently increased without its knowledge by the assessor, after that officer had stated to it that its property would be assessed at the same value as in the preceding year: *Citizens' Nat. Bank v. Columbia Co.*, 23 Wash. 441, 63 Pac. 209.

§ 1716. State Board of Equalization—Duties of.

The secretary of state, the commissioner of public lands and the auditor of state shall constitute the board of equalization. The auditor shall be president of the board and they shall remain in session not to exceed twenty days; may adjourn from day to day, and employ such clerical assistance as may be deemed

necessary to facilitate its labors: Provided, That the expense of such board shall not exceed the sum of \$500 in any one year. The said board shall meet annually on the first Tuesday in September, at the office of the auditor of state, and shall examine and compare the returns of the assessment of the property in the several counties of the state, and proceed to equalize the same, so that each county in the state shall pay its due and just proportions of the taxes for state purposes for such assessment year, according to the ratio the valuation of the property in each county bears to the total valuation of all the property in the state.

First. They shall classify all property, real and personal, and shall raise and lower the valuation of any class of property in any county to a value that shall be equal and uniform, so far as possible, in every part of the state, for the purpose of ascertaining the just amount of tax due from each county for state purposes.

Second. The secretary shall keep a full record of the proceedings of the board, and the same shall be published in the biennial report of the auditor of the state.

Third. They shall have authority to adopt rules and regulations for the government of the board, and to enforce obedience to its orders in all matters in relation to the returns of county assessments, and the equalization of values by said board. The said board of equalization shall apportion the amount of tax for state purposes as required by law, to be raised in the state among the several counties therein, in proportion to the valuation of the taxable property therein for the year as equalized by the board, and shall also ascertain the gross amounts justly due from each county for military, state bond interest, and state bond sinking fund taxes, at rates and limitations fixed by law. It shall be the duty of the county auditor in each county when he shall have received the report of the state auditor, as provided in section sixty-one of this act, to determine the rates per cent necessary to raise the taxes required for state purposes as determined by the state board of equalization, and place the same on the tax rolls of the county as provided by law. [Amendment, approved Mar. 6, 1899; L. 1899, p. 288.]

§ 1716. State board of equalization, powers of.—Under section 60, Laws of 1897, as amended by Laws 1899, page 228, and article 7 of the constitution, power is conferred upon the state board of equalization to raise the valuation of certain

classes of property in certain counties, even if thereby the aggregate valuation of all the property in the state be increased: *State v. Nichols*, 29 Wash. 159, 69 Pac. 372.

§ 1717. Transcript sent to Counties.

When the state board complete their equalization, the auditor of state shall transmit to each county auditor a transcript of the proceedings of the board, within ten days after said board adjourns, specifying the amount to be levied and collected on said assessment books for state purposes for such year, and in addition thereto he shall certify to each county auditor the amount due to each fund and unpaid from such county for the seventh preceding year, commencing with the tax levied for the year 1892. Every succeeding year thereafter the

delinquent state taxes shall be so certified to the county auditors, and this sum shall be added to the amount levied for the current year. The state auditor shall close the account of each county for the seventh preceding year and charge the amount of such delinquency to the tax levy of the current year. All taxes collected on and after the first day of July last preceding such certificate, on account of delinquent state taxes for the seventh preceding year, shall belong to the county and by the county treasurer be credited to the county current expense fund of the county in which collected. The county auditor shall compute the required per centum on the valuation thereof, as it stands after the same has been equalized by the county board of equalization, and shall extend such taxes in the proper columns of such books: Provided, that the rate so computed shall not be such as to raise a surplus of more than five per cent over the total amount required by the state board. [Amendment, approved Mar. 6, 1899; L. 1899, p. 289.]

§ 1718. Classification of debts.—Under the revenue law of 1897 (Laws 1897, p. 136), interest falling due upon county bonds issued under Laws 1887-88, page 12, and Laws 1889-90, page 37, is properly classed as county indebtedness and payable from the "county indebtedness fund," in the absence of provisions in the acts authorizing such bonds limiting payment to the methods prescribed therein: *Seymour v. Frost*, 25 Wash. 644, 66 Pac. 90.

§ 1718. Power of county commissioners. Where the county commissioners, after making a tax levy for the ensuing year, discover that the levy was excessive and would raise more revenue than was required to meet the obligations of the county, it is within their power to revoke their former action and reduce the levy: *State v. Headlee*, 22 Wash. 126, 60 Pac. 126.

§ 1719. Time and Rate of Levy.

For the purpose of raising a revenue for the state, county indebtedness, county current expense, school, road and other purposes, the board shall, at said October session, levy a tax on all taxable property in the county, as shown by the assessment-roll, sufficient for such purposes: Provided, That state tax shall not exceed the amount levied by the state board of equalization; the tax for payment of county indebtedness shall not exceed five mills; the tax for payment of county current expense shall not exceed eight mills; the school tax shall not exceed eight mills, except for districts in cities of 10,000 or more inhabitants, where it shall not exceed ten mills, unless the board of directors thereof shall by unanimous consent of all its members determine upon a greater levy, not exceeding two per cent; the road tax shall not exceed five mills; the bridge tax shall not exceed three mills, and all other taxes shall be in accordance with the laws of the state.

That all acts and parts of acts in conflict herewith are hereby repealed. [Amendment, approved Mar. 16, 1903; L. 1903, p. 339, § 1.]

§ 1724. Taxes Payable to County Treasurer—Delinquent When.

The county treasurer shall be the receiver and collector of all taxes extended upon the tax books of the county, whether levied for state, county, school, bridge, road, municipal or other purposes, and also of all fines, forfeitures or penalties received by any person or officer for the use of his county. All taxes

upon real property made payable by the provisions of this act shall be due and payable to the treasurer as aforesaid on or before the thirty-first day of May in each year, after which date they shall become delinquent, and interest at the rate of fifteen per cent per annum shall be charged upon such unpaid taxes from the date of delinquency until paid: Provided, however, When the total amount of tax payable by one person is two dollars or more, then if one-half of such taxes be paid on or before said thirty-first day of May, then the time of payment of the remainder thereof shall be extended, and said remainder shall be due and payable on or before the thirtieth day of November following; but if the remaining one-half of such taxes be not paid on or before the thirtieth day of November, then such remaining one-half shall be delinquent, and interest at the rate of fifteen per cent per annum shall be charged thereon from the first day of June preceding until paid: Provided further, There shall be an allowance of three per cent rebate to all payers of taxes who shall pay the taxes on real property in one payment and in full on or before the fifteenth day of March next prior to the date of delinquency. All rebates allowed under this section shall be charged to the county current expense fund and all collections from penalties and interest on delinquent taxes shall be credited to the current expense fund. [Amendment, approved Mar. 6, 1899; L. 1899, p. 290.]

§ 1727. Taxes on Personalty—Delinquent When—Distrain for.

On and after the first Monday of February succeeding the levy of taxes the county treasurer shall proceed to collect all personal property taxes. He shall give notice by mail to all persons charged with personal property taxes and if such taxes are not paid within thirty days after said notice, he shall distrain sufficient goods and chattels belonging to the person charged with such taxes, if found within the county, to pay the same, together with all accruing costs with interest, and shall immediately proceed to advertise the same by posting written notices thereof in three public places in the county, in which such property has been levied upon, stating the time when and place where such property will be sold, and if the taxes for which such property is distrained, and the costs which accrue thereon, are not paid before the date appointed for such sale, which shall be not less than ten days after the taking of such property, such treasurer shall proceed to sell such property at public auction, or so much thereof as will be sufficient to pay such taxes with interest and costs, and if there be any overplus of money arising from the sale of any personal property, the treasurer shall immediately pay any such overplus to the owner of the property so sold, or to his legal representatives: Provided, That if any personal property upon which the taxes have been levied but not paid, is about to be removed from the county where the same has been assessed, the county treasurer may demand such taxes without the notice provided for in this section, and if necessary, may distrain and sell sufficient goods and chattels to pay the same." [Amendment, approved Mar. 6, 1899; L. 1899, p. 291.]

§ 1727. Taxation—Lien upon personal property—Transfer of title—Right to enforce payment by distrain—Construction

of statutes.—Under Laws 1895, page 520, section 21, providing for a tax lien upon personal property, the lien continues and

follows the property if it remains in the county, although title thereto may have been transferred to another owner. The purchaser of a stock of goods upon which there is a tax lien, who mixes therewith other goods subsequently purchased in such a manner that the portion subject to lien cannot be segregated, thereby subjects the whole stock to the satisfaction of the tax lien. Revenue laws should receive a fair and liberal construction so as to effect the end for which they were intended; and one part should not be given a construction that nullifies another, if it is possible to construe the different provisions together: *Mills v. County of Thurston*, 16 Wash. 378, 47 Pac. 759.

This section was amended by Laws of 1895, page 514, section 15; Laws 1897, page 170, section 71.

Laws 1895, page 514, section 15, providing for the distraint of goods and chattels belonging to the person charged with delinquent personal property taxes, if found within the county, authorizes, when con-

strued with other provisions of the revenue law, the right of distraint against another to whom the possession and title of such goods have passed subject to the tax lien: *Id.*

Collected by distraint, when.—The liability of a dissolved banking corporation for unpaid taxes may be enforced by the county treasurer by distraint and levy upon property in the hands of trustees for the stockholders and creditors: *Bramel v. Manring*, 18 Wash. 421, 51 Pac. 1050.

Mode of collection.—The right of action for the collection of a tax does not accrue at the date the lien attaches, but from the date of delinquency. An action will not lie for the collection of a tax on personal property, when the statute gives the treasurer the exclusive right to enforce the collection of the tax by distraint and sale of the property taxed. Courts of equity have no jurisdiction to collect taxes or to appoint a receiver for that purpose: *Pierce County v. Merrill*, 19 Wash. 175, 52 Pac. 854.

§ 1728. Uncollected Taxes—Reported to Auditor.

If the county treasurer is unable, for the want of goods or chattels whereupon to levy, to collect by distress or otherwise, the taxes, or any part thereof, which may have been assessed upon the personal property of any person or corporation, or an executor or administrator, guardian, receiver, accounting officer, agent or factor, such treasurer shall file with the county auditor, on the first day of January following, a list of such taxes, with an affidavit of himself or of the deputy treasurer intrusted with the collection of said taxes, stating that he had made diligent search and inquiry for goods and chattels wherewith to make such taxes, and was unable to make or collect the same. The county auditor shall deliver such list and affidavit to the board of county commissioners at their first session thereafter, and they shall cancel such taxes as they are satisfied cannot be collected. [Amendment, approved Mar. 6, 1899; L. 1899, p. 291.]

§ 1732. Treasurer's Settlement with Auditor.

Immediately after the last day of each month, the county treasurer shall pay over to the state treasurer the amount collected by him and credited to the various state funds, but every such payment shall be subject to correction for error discovered upon the quarterly settlement next following. The county auditor shall at the same time ascertain and report to the state auditor by ordinary letter or other written memorandum, the amounts due to the various state funds. If the same be not paid to the state treasurer before the tenth day of the month he shall then make a sight draft on the county treasurer for such amount. On the first Mondays of January, April, July, and October, respectively, of each year, the county treasurer shall make full settlement with the county auditor of his receipts and collections for all purposes from the date of the last settlement up to and including the last day of the preceding month.

The county auditor shall, on or before the fifteenth day of the month in which such settlement is made, notify the state auditor of the result of the quarterly settlement with the county treasurer, as above specified. Should any county treasurer fail or refuse to honor such draft or make payment of the amount thereon (except in case of manifest error or other good and sufficient cause) he shall be guilty of nonfeasance in office and upon conviction thereof shall be punished according to law. [Amendment, approved Mar. 6, 1899; L. 1899, p. 292.]

§ 1733. Annual Report of Treasurer to Auditor.

On the first Monday of January of each year the county treasurer shall balance up the tax rolls in his hands and with which he stands charged on the roll accounts of the county auditor. He shall then report to the county auditor in full the amount of taxes he has collected and specify the amount collected on each fund. He shall also report the amount of taxes that remain uncollected and delinquent upon the tax rolls, which, with his collection and credits on account of errors and double assessments, should balance his roll accounts as he stands charged. He shall then report the amount of collections on account of interest since the taxes became delinquent, and as added by him to the original amounts when making such collections, and with which he is now to be charged by the auditor, such reports to be duly verified by affidavit. He shall also at the same time submit to the auditor his collection register, showing all taxes collected by him since the last preceding annual settlement of current and delinquent taxes. The county auditor shall thereupon proceed to compare the stub tax receipts of the treasurer with the treasurer's tax rolls and the collection register submitted to him, and shall note if the tax rolls are properly marked opposite each tract or tax with the date and number of the treasurer's receipt that he gave in discharge of any tax, if same is properly entered to the credit of each tract or tax described in such receipt, and if the description, amount, names and numbers and funds agree. The auditor shall also compare such receipts with the treasurer's cash-book or collection register, upon which he is required to post them, and if properly credited to the several funds, and also coincides in all respects with the tax rolls. He shall then test the footings upon the treasurer's collection register to see that no errors have been made or frauds perpetrated. He shall then satisfy himself that the collections of the interest required to be added after taxes have become delinquent have been collected and properly accounted for and if so to charge the treasurer with the same. If the treasurer's receipts in all respects are correct and true, and the collections fully and properly accounted for on the same, the auditor shall enter the credits and debits upon the treasurer's roll accounts and properly balance the same up to date. [Amendment, approved Mar. 6, 1899; L. 1899, p. 293.]

§ 1739. Holders of Liens on Land may Pay Tax and have Additional Lien Therefor.

Any person who has a lien by mortgage or otherwise, upon any real prop-

erty upon which the taxes have not been paid, may pay such taxes and the interest, penalty and costs thereon; and the receipt of the county treasurer shall constitute an additional lien upon such land, to the amount therein stated; and the amount so paid and the interest thereon at the rate specified in the mortgage or other instrument shall be collectible with, or as a part of, and in the same manner as the amount secured by the original lien. Any person desiring to pay taxes upon any part or parts of real estate heretofore or hereafter assessed as one parcel, or tract, may do so by applying to the county treasurer, who must carefully investigate and ascertain the relative or proportionate value said part bears to the whole tract assessed, on which basis the assessment must be divided, and taxes collected accordingly: Provided, Where the assessed valuation of the tract to be divided exceeds two thousand dollars, a notice by registered mail must be given to the several owners interested in said tract, if known, and if no protest against said division be filed with the county treasurer within twenty days from date of notice, the county treasurer shall duly accept payment and issue receipt on apportionment as by him made. In cases where protest is filed to said division appeal shall be made to the county commissioners at their next regular session for final division, and the county treasurer shall accept and receipt for said taxes as determined and ordered by county commissioners. Any person desiring to pay on an undivided interest in any real property may do so by paying to the county treasurer a sum equal to such proportion of the entire taxes charged on the entire tract as interest paid on bears to the whole. [Amendment, approved Mar. 6, 1899; L. 1899, p. 294.]

§ 1739. Taxes—Payment by lienholders. A second mortgagee, who forecloses and acquires a right to a deed of the premises, cannot, as against a first mortgagee, set up a claim for taxes paid after the expiration of the right of redemption, even though the deed had not issued to him, as he stands in the position of owner of the premises until foreclosure of the prior mortgage. Taxes paid by a mortgagee after foreclosure but prior to the expiration of the right to redeem therefrom, although not delinquent at the time of payment, may be recovered either from the redemptioner or a prior mortgagee: *Farrell v. Gustin*, 18 Wash. 239, 51 Pac. 372.

The holder of a chattel mortgage upon personalty, who pays delinquent taxes thereon, acquires no additional lien thereby, by virtue of Laws 1891, page 322, section 109, which provides that any person

who has a lien, by mortgage or otherwise, upon any real property on which the taxes have not been paid, may pay such taxes, and the same shall constitute an additional lien: *Dunsmuir v. Port Angeles Gas etc. Co.*, 24 Wash. 104, 63 Pac. 1095.

A junior mortgagee who pays the taxes on the mortgaged property for the purpose of protecting its lien, and without knowledge of the existence of a prior mortgage thereon, is entitled to have the sum paid for taxes declared a lien superior to that created by the prior mortgage: *Fischer v. Woodruff*, 25 Wash. 68, 87 Am. St. Rep. 742, 64 Pac. 923.

Laws 1897, page 175, section 82, is applicable to holders of general judgment liens as well as to holders of specific liens: *Packwood v. Briggs*, 25 Wash. 530, 65 Pac. 846.

§ 1740. When Lien for Taxes Attaches.

The taxes assessed upon real property shall be a lien thereon from and including the first day of March in the year in which they are levied until the same are paid, but as between a grantor and grantee such lien shall not attach until the first Monday of February of the succeeding year. The taxes assessed upon personal property shall be a lien upon all the real and personal property of the person assessed, from and after the date upon which such assessment is

made, and no sale or transfer of either real or personal property shall in any way affect the lien for such taxes upon such property. [Amendment, approved Mar. 29, 1903; L. 1903, p. 73.]

§ 1740. **Taxes—When become lien.**—The lien for taxes upon personal property does not attach until the first Monday in February, and, where the possession of such property has been transferred between the levy of the current tax and said date, the purchaser takes such property free of lien from such current tax: *Phelan v. Smith*, 22 Wash. 397, 61 Pac. 31.

§ 1740a. Transient Vendors of Merchandise—Duties of.

Whenever any person, firm or corporation shall, subsequent to the first day of March of any year, bring or send into any county any stock of goods or merchandise to be sold or disposed of in a place of business temporarily occupied for their sale, without the intention of engaging in permanent trade in such place, the owner, consignee or person in charge of the said goods or merchandise shall immediately notify the county assessor, and thereupon the assessor shall at once proceed to value the said stock of goods and merchandise at its true value, and upon such valuation the said owner, consignee or person in charge shall pay to the collector of taxes a tax at the rate assessed for state, county and local purposes in the taxing district in the year then current. And it shall not be lawful to sell or dispose of any such goods or merchandise as aforesaid in such taxing district until the assessor shall have been so notified as aforesaid and the tax assessed thereon paid to the collector. Every person, firm or corporation bringing into any county of this state goods or merchandise after the first day of March shall be deemed subject to the provisions of this section: Provided, That all persons having paid the tax as herein provided for, shall at the time of the regular assessment next succeeding said payment, be allowed by the county assessor in making his assessment a deduction in a sum equal to that part of the entire assessment of the previous year as the number of days of the previous assessment year he was not in such county bears to the whole of such assessment year. [Amendment, approved Mar. 6, 1899; L. 1899, p. 295.]

§ 1749. Foreclosure of Delinquent Certificates.

Any day, after the expiration of six months after the taxes charged against real property are delinquent, the treasurer shall have the right, and it shall be his duty, upon demand and payment of the taxes and interest, to make out and issue a certificate or certificates of delinquency against such property, and such certificate or certificates shall be numbered and have a stub, which shall be a summary of the certificate and shall contain a statement:

1. Description of the property assessed.
2. Year or years for which assessed.
3. Amount of tax and interest due.
4. Name of owner, or reputed owner, if known.
5. The rate of interest the certificate shall bear.
6. The time when a deed may be had, if not sooner redeemed.

7. When a certificate of any preceding year is outstanding and unredeemed, it shall be stated in subsequent certificates issued, and the principal sum due, with date of issue.

8. A guaranty of the county or municipality to which the tax is due that if for any irregularity of the taxing officers this certificate be void then such county or municipality will repay the holder the sum paid thereon with interest at the rate of six per cent per annum from the date of its issuance: Provided, That nothing herein contained shall prevent the running of interest during the said period of six months from the date of delinquency, at the rate of interest provided by law on delinquent taxes.

An emergency exists, and this bill shall take effect immediately. [Amendment, approved Mar. 19, 1903; L. 1903, p. 384, § 1.]

§ 1749. Delinquency certificates, valid. A statute respecting the collection of delinquent taxes may be retroactive in its operation, if so expressly declared by the legislature; the act of 1897 (Laws 1897, p. 181, §§ 94, 95), in regard to the issuance of delinquency certificates is applicable to delinquent taxes for the year 1896. The provision of the revenue law of 1897 requiring counties and municipalities to guarantee the payment of interest upon void tax certificates does not render that portion invalid on the ground that it might, under some contingencies, cause the constitutional limit of indebtedness to be exceeded: *State ex rel. v. Whittlesey*, 17 Wash. 448, 50 Pac. 119.

It is within the power of the legislature to require municipalities to guarantee the repayment with interest of money paid for delinquent tax certificates in case the tax be void: *Id.*

Delinquency certificates—Inclusion of penalties.—Under Laws 1897, page 181, section 94 (Bal. Code, § 1749), providing

for the issuance of delinquency certificates upon payment of taxes and interest against delinquent property, the treasurer is authorized to include as a portion of the payment necessary to secure the delinquency certificate such penalties authorized by prior laws as have attached and become a part of the taxes: *Pickering v. Ball*, 19 Wash. 185, 52 Pac. 1022.

Segregation of property used as an entirety.

Where an improvement upon real estate is situated upon three lots, occupying all alike and used for one purpose by the same owner, the tax assessed on the three lots, lands and improvements together, must be paid as levied upon the property as a whole; and the fact that the assessor charged the improvement against but one of the lots would not warrant the issuance of a delinquency certificate upon tender of the tax assessed against the two other lots, based upon their value as land alone without improvements: *Million v. Welts*, 29 Wash. 106, 69 Pac. 633.

§ 1751. Foreclosure of Delinquent Certificates.

Any time after the expiration of three years from the original date of delinquency of any tax included in a certificate of delinquency, the holder of any certificate of delinquency may give notice to the owner of the property described in such certificate that he will apply to the superior court of the county in which such property is situated for a judgment foreclosing the lien against the property mentioned herein. Such notice shall contain —

1. The title of the court, the description of the property and the name of the owner thereof, if known, the name of the holder of the certificate, the date thereof, and the amount for which it was issued, the year or years for the delinquent taxes for which it was issued, the amount of all taxes paid for prior or subsequent years, and the rate of interest on said amount.

2. A direction to the owner summoning him to appear within sixty days after service of the summons, exclusive of the day of service, and defend the action or pay the amount due, and when service is made by publication a direction to

the owner, summoning him to appear within sixty days after the date of the first publication of the summons, exclusive of the day of said first publication, and defend the action or pay the amount due.

3. A notice that, in case of failure so to do, judgment will be rendered foreclosing the lien of such taxes and costs against the land and premises named.

4. The summons shall be subscribed by the holder of the certificate of delinquency, or by some one in his behalf, and residing within the state of Washington, and upon whom all process may be served.

5. A copy of said notice shall be delivered to the county treasurer. Thereafter when any owner of real property or person interested therein seeks to redeem as provided in section 17 of this act, the treasurer shall ascertain the amount of costs accrued in foreclosing said certificate and include said costs as a part of the redemption required to be paid. [Amended by act of Mar. 6, 1899; L. 1899, p. 296; amendment, approved Mar. 20, 1901; L. 1901, p. 384.]

§ 1751a. Delinquency certificates to county held valid.—Section 98 of the Revenue Law of 1897, providing for the issuance of delinquency certificates to counties or municipalities, when no certificate has been sold to individuals, cannot be held to be inoperative and invalid on the ground of impossibility of its performance: *State ex rel. American Sav. Union v. Whittlesey*, 17 Wash. 448, 50 Pac. 119.

Foreclosure of delinquent certificates.—Laws 1899, page 302, section 20, does not require the payment of street assessments, but refers merely to the general taxes, and special taxes assessed in the same manner as general taxes: *McMillan v. Tacoma*, 26 Wash. 358, 67 Pac. 68.

Publication of summons in cases of de-

linquency does not contemplate that the county treasurer shall contract for the publication of the delinquent tax list, except upon the failure to publish such list by the official newspaper of the county selected by the commissioners, and it is within the power of the commissioners to include such tax list in the contract let by them for public printing: *Olympian Tribune Co. v. Byrne et al.*, 28 Wash. 80, 68 Pac. 335.

Laws 1901, page 213, amending section 5645 of code, is held to be unconstitutional by reason of defect of title in *State ex rel. Seattle Electric Co. v. Superior Court*, 28 Wash. 317, 98 Am. St. Rep. 83, 68 Pac. 957.

§ 1751½. County Attorney to Furnish Forms.

The county prosecuting attorney shall furnish to holders of certificates of delinquency, at the expense of the county, forms of applications for judgment, forms of summons and form of publication notices when the same are required, and shall prosecute to final judgment all actions brought by holders of certificates under the provisions of this act for the foreclosure of tax liens, when requested so to do by the holder of any certificate of delinquency: Provided, Said holder has duly paid to the clerk of the court the sum of two dollars for each action brought as per section 119: Provided, further, That nothing herein shall be construed to prevent said holder from employing other and additional counsel, or prosecuting said action independent of and without assistance from the prosecuting attorney, if he so desires, but in such cases, no other and further costs or charge whatever shall be allowed than the costs provided in this section and section 119 of this act: And Provided, also, That in no event shall the county prosecuting attorney collect any fee for the services herein enumerated. [Enactment, approved Mar. 6, 1899; L. 1899, p. 296, § 14; amendment, approved Mar. 16, 1903; L. 1903, p. 338, § 1.]

§ 1751b. Foreclosure by County.

After the expiration of five years from the date of delinquency, when any property remains on the tax roll for which no certificate of delinquency has been issued, the county treasurer shall proceed to issue certificates of delinquency on said property to the county, and shall file said certificates when completed with the clerk of the court, and the treasurer shall thereupon, with such legal assistance as the county commissioners shall provide in counties having a population of thirty thousand or more, and with the assistance of the county prosecuting attorney in counties having a population of less than thirty thousand, proceed to foreclose in the name of the county, the tax liens embraced in such certificates, and the same proceedings shall be had as when held by an individual: Provided, That summons may be served or notice given exclusively by publication in one general notice, describing the property as the same is described on the tax rolls. Said certificates of delinquency issued to the county may be issued in one general certificate in book form including all property, and the proceedings to foreclose the liens against said property may be brought in one action and all persons interested in any of the property involved in said proceedings may be made codefendants in said action, and if unknown may be therein named as unknown owners, and the publication of such notice shall be sufficient service thereof on all persons interested in the property described therein. The names of the person or persons appearing on the treasurer's rolls as the owner or owners of said property for the purpose of this act shall be considered and treated as the owner or owners of said property, and if upon said treasurer's rolls it appears that the owner or owners of said property are unknown, then said property shall be proceeded against, as belonging to an unknown owner or owners as the case may be, and all persons owning or claiming to own, or having or claiming to have an interest therein, are hereby required to take notice of said proceedings and of any and all steps thereunder. The publication of the summons or notice required by this section shall be made by the county treasurer in the official newspaper of the county: Provided, The price charged by any such newspaper for such publication for the whole number of issues shall not exceed in any case the sum of ten cents for each description contained in said notice; and that, if such publication cannot be made in said newspaper at said price, the county treasurer may cause such publication to be made in any other newspaper printed, published and of general circulation in the county, at a cost not to exceed said price. [Amended by act of 1899; L. 1899, p. 297; amendment, approved Mar. 20, 1901; L. 1901, p. 385.]

§ 1753. Redemption of interest.—The owner of an undivided interest in land sold as a whole for delinquent taxes is entitled to a certificate of redemption therefrom on his interest, when he tenders to the

county treasurer the amount due for taxes, interest and costs on his proportion of the land: *State ex rel. v. Reed*, 29 Wash. 383, 69 Pac. 1096.

[§§ 1753 and 1754, repealed by act of 1899; L. 1899, p. 298.]

§ 1755. Redemption—Penalty—Interest.

Real property upon which certificates of delinquency have been issued under the provisions of this act, may be redeemed at any time before the issuance of

tax deed, by payment, in legal money of the United States, to the county treasurer of the proper county, for the benefit of the owner of the certificate of delinquency against said property, the amount for which the same was sold, together with interest at fifteen per cent per annum thereon from date of issuance of said certificate of delinquency until paid. The person redeeming such property shall also pay the amount of all taxes, assessments, penalties, interest and costs accruing after the issuance of such certificate of delinquency, and paid by the holder of said certificate of delinquency or his assignee, together with fifteen per cent interest on such payment from the day the same were made. No fee shall be charged for any redemption after the passage of this act. Tenants in common or joint tenants shall be allowed to redeem their individual interests in real property for which certificates of delinquency have been issued under the provisions of this act, in the manner and under the terms specified in this section for the redemption of real property other than that of insane persons and minor heirs. Any redemption made shall inure to the benefit of the person having the legal or equitable title to the property redeemed, subject however, to the right of the person making the same to be reimbursed by the person benefited. If the real property of any minor heir, or any insane person, be sold for nonpayment of taxes or assessments, the same may be redeemed at any time after sale and before the expiration of one year after such disability has been removed upon the terms specified in this section on the payment of interest at the rate of fifteen per cent per annum on the amount for which the same was sold, from and after the date of sale, and in addition the redemptioner shall pay the reasonable value of all improvements made in good faith on the property, less the value of the use thereof, which redemption may be made by themselves or any person in their behalf. [Amendment, approved Mar. 6, 1899; L. 1899, p. 298.]

§ 1755. Sale—Redemption—Interest.— The fact that there is a general law in the state limiting interest charges within twelve per cent would not preclude the legislature from authorizing a charge of fifteen per cent interest upon the redemption of delinquent tax certificates: *State ex rel. v. Whittlesey*, 17 Wash. 448, 50 Pac. 119.

When time to redeem expires.

A county treasurer is warranted in re-

fusing to execute a conveyance to the purchaser at a delinquent tax sale, although the latter has tendered all the taxes due and is fully entitled to a deed, if before conveyance full redemption is made by the owner, since the statute governing tax sales permits redemption therefrom at any time before the execution of the tax deed: *State v. Cranney*, 30 Wash. 595, 71 Pac. 50.

§ 1756. Judgment of Foreclosure.

The court shall examine each application for judgment foreclosing tax lien and if defense (specifying in writing the particular cause of objection) be offered by any person interested in any of said lands or lots to the entry of judgment against the same, the court shall hear and determine the matter in a summary manner, without other pleadings, and shall pronounce judgment as the right of the case may be; or said court may, in its discretion, continue such individual cases, wherein defense is offered, to such time as it may be necessary, in order to secure substantial justice to the contestants therein; but in all other cases said court shall proceed to determine the matter in a summary manner

as above specified. In all judicial proceedings of any kind for the collection of taxes, assessments, and the penalties, interest and costs thereon, all amendments may be made which by law can be made in any personal action pending in such court and no assessments of property or charge for any of said taxes shall be considered illegal on account of any irregularity in the tax lists or assessment rolls or on account of the assessment-rolls or tax lists not having been made, completed or returned within the time required by law, or on account of the property having been charged or listed in the assessment or tax lists without name or any other name than that of the owner, and no error or informality in the proceedings of any of the officers connected with the assessment, levying or collection of the taxes, shall vitiate or in any manner affect the tax or the assessment thereof, and any irregularities or informality in the assessment-rolls or tax lists or in any of the proceedings connected with the assessment or levy of such taxes or any omission or defective act of any officer or officers connected with the assessment or levying of such taxes, may be, in the discretion of the court, corrected, supplied and made to conform to law by the court. The court shall give judgment for such taxes, assessments, penalties, interest and cost as shall appear to be due upon the several lots or tracts described in said notice of application for judgment or complaint, and such judgment shall be a several judgment against each tract or lot or part of a tract or lot for each kind of tax or assessment included therein, including all penalties, interest and costs, and the court shall order and direct the clerk to make out and enter an order for the sale of such real property against which judgment is made, or vacate and set aside the certificate of delinquency or make such other order or judgment as in law and equity may be just. Said order shall be signed by the judge of the superior court and attested by the clerk thereof, and a certified copy of said order, together with a list of the property therein ordered sold shall be delivered to the county treasurer, and shall be full and sufficient authority for him to proceed to sell said property or so much of each tract or lot as may be necessary for said sum as set forth in said order and to take such further steps in the matter as are provided by law. The county treasurer shall immediately after receiving the order and judgment of the court proceed to sell said property as provided in this act. All sales shall be made on Saturday between the hours of nine o'clock in the morning and four o'clock in the afternoon, and shall continue from day to day (Sundays excepted) during the same hours until all lots or tracts are sold, after first giving notice of the time and place where such sale is to take place for ten days successively, by posting notice thereof in three public places in such county, one of which shall be in the office of said treasurer. Said notice shall be substantially in the following form:

TAX JUDGMENT SALE.

Public notice is hereby given that pursuant to a real estate tax judgment of the superior court in the county, in state of Washington, and an order of sale duly issued by said court, entered the day of, in proceedings for foreclosure of tax liens upon real estate, as per provisions of

law, I shall on the day of, at o'clock, at the front door of the courthouse in the city of, and county of, state of Washington, sell the following described lands or lots, or so much of each of them as shall be sufficient to satisfy the full amount of taxes, assessments, penalties, interest and costs adjudged to be due thereon as follows, to wit: (Description of property).

In witness whereof, I have hereunto affixed my hand and seal this day of

Treasurer of County,
State of Washington.

The person at such sale offering to pay the amount due on each tract or lot for the least quantity thereof shall be the purchaser of such quantity which shall be taken from the east side of such tract or lot, and the remainder thereof shall be discharged from the lien. In determining such piece or parcel of such tract or lot, a line is to be drawn due north and south, far enough west of the eastern point of tract to make the requisite quantity. The treasurer may include in one notice any number of separate tracts or lots. The county treasurer shall execute to the purchaser of any piece or parcel of land a tax deed. The deed so made by the county treasurer, under the official seal of his office, shall be recorded in the same manner as other conveyances of real estate, and shall vest in the grantee, his heirs and assigns the title to the property therein described, without further acknowledgment or evidence of such conveyance and shall be substantially in the following form:

State of Washington, County of, ss.

This indenture made this day of, between, as treasurer of county, State of Washington, party of the first part and, party of the second part:

Witnesseth, That, whereas, at a public sale of real estate held on the day of, pursuant to a real estate tax judgment entered in the superior court in the county of on the day of, in proceedings to foreclose tax liens upon real estate and an order of sale duly issued by said court, duly purchased in compliance with the laws of the state of Washington, the following described real estate, to wit: (Here place description of real estate conveyed) and that said has complied with the laws of the state of Washington necessary to entitle (him, her or them) to a deed for said real estate.

Now, therefore, know ye, That I,, county treasurer of said county of, state of Washington, in consideration of the premises and by virtue of the statutes of the state of Washington, in such cases provided, do hereby grant and convey unto, his heirs and assigns, forever, the said real estate hereinbefore described.

Given under my hand and seal of office this day of, A. D.,

County Treasurer.

[Amendment, approved Mar. 6, 1899; L. 1899, p. 301.]

§ 1756. Tax sales—Forfeiture to county—Redemption—When time begins to run.

Under the Revenue Law of 1893 (Laws 1893, p. 370, § 105 et seq.), where land has been forfeited to the county for want of a bidder at the sale for delinquent taxes, and a certificate of sale of such land is subsequently issued to an applicant, the period allowed for redemption begins to run from the date of issuance of the certificate and not from the date of forfeiture: *State ex rel. Taylor v. Maple*, 16 Wash. 430, 47 Pac. 966.

Jurisdictional defects not cured by statute.

The statute of this state curing defects in assessment proceedings and the levying of taxes is sufficient to validate all irregularities not affecting the substantial

justice of the tax, but will not cure the want of jurisdictional acts requisite to charge a valid tax: *Coolidge v. Pierce County*, 28 Wash. 95, 68 Pac. 391.

Due notice, what is.

Where a statute provides for the charging of a tax against land, and that the proceedings for its enforcement shall be in rem, such proceedings would be due notice to the owner of such realty of the tax charged, and therefore the failure of the taxing officers to enter the name of the owner after the description of the realty, or to assess it to an unknown owner, would not constitute a substantial defect, in view of the curative act in force at the time declaring that the omission of the name of the owner or unknown owner should not invalidate the tax: *Id.*

§ 1757. Appeals to Supreme Court.

Appeals from the judgment of the court may be taken to the supreme court at any time within thirty days after the rendition of said judgment by giving notice thereof orally in open court at the time of the rendition of the judgment, or by giving written notice thereof at any time thereafter, and within thirty days from the date of the rendition of such judgment, and the party taking such appeal shall execute, serve and file a bond payable to the state of Washington, with two or more sureties, to be approved by the court, in an amount to be fixed by the court, conditioned that the appellant shall prosecute his said appeal with effect, and will pay the amount of any taxes, assessments, penalties, interest and costs which may be finally adjudged against the real estate involved in the appeal by any court having jurisdiction of the cause, which bond shall be so served and filed at the time of the service of said notice of appeal, and the respondent may, within five days after the service of such bond, object to the sureties thereon, or to the form and substance of such bond, in the court in which the action is pending, and if, upon hearing of such objections to said bond, it is determined by the court that the sureties thereon are insufficient for any reason, or that the bond is defective for any other reason, the court shall direct a new bond to be executed with sureties thereon, to be justified before the court as in bail upon arrest but no appeal shall be allowed from any judgment for the sale of land or lot for taxes, and no bond given on appeal as herein provided shall operate as a supersedeas, unless the party taking such appeal shall before the time of giving notice of such appeal, and within thirty days herein allowed within which to appeal, deposit with the county treasurer of the county in which the land or lots are situated, an amount of money equal to the amount of the judgment and costs rendered in such cause by the trial court. If, in case of an appeal, the judgment of the lower court shall be affirmed, in whole or in part, the supreme court shall enter judgment for the amount of taxes, interest and costs, with damages not to exceed twenty per cent, and shall order that the amount deposited with the treasurer as aforesaid, or so much thereof as may be necessary, be credited upon the judgment so rendered, and execution shall issue for the balance of said judgment, damages and costs. The clerk

of the supreme court shall transmit to the county treasurer of the county in which the land or lots are situated a certified copy of the order of affirmance, and it shall be the duty of such county treasurer upon receiving the same to apply so much of the amount deposited with him, as aforesaid, as shall be necessary to satisfy the amount of the judgment of the supreme court, and to account for the same as collected taxes. If the judgment of the superior court shall be reversed and the cause remanded for a rehearing, and if, upon a rehearing, judgment shall be rendered for the sale of the land or lots for taxes, or any part thereof, and such judgment be not appealed from, as herein provided, the clerk of such superior court shall certify to the county treasurer the amount of such judgment, and thereupon it shall be the duty of the county treasurer to certify to the county clerk the amount deposited with him, as aforesaid, and the county clerk shall credit the same judgment with the amount of such deposit, or so much thereof as will satisfy the judgment, and the county treasurer shall be chargeable and accountable for the amount so credited as collected taxes. Nothing herein shall be construed as requiring an additional deposit in case of more than one appeal being prosecuted in said proceeding. If, upon a final hearing, judgment shall be refused for the sale of the land or lots for the taxes, penalties, interest and costs, or any part thereof, in said proceedings, the county treasurer shall pay over to the party who shall have made such deposit, or his legally authorized agent or representative, the amount of the deposit, or so much thereof as shall remain after the satisfaction of the judgment against the land or lots in respect to which such deposit shall have been made.

County Treasurer to Issue Deed.

The county treasurer shall issue a deed in the following form for all lots or parcels of real estate sold under the provisions of the act:

State of Washington, }
County of..... } ss.

This indenture, made this day of, 190.., between as treasurer of county, state of Washington, the party of the first part, and, party of the second part.

Witnesseth, That whereas, at a public sale of real estate, held on the day of, A. D., 190.., pursuant to an order of the board of county commissioners of the county of, state of Washington, duly made and entered, and after having first given due notice of the time, and place and terms of said sale, and, whereas, in pursuance of said order of the said board of county commissioners, and of the laws of the state of Washington, and for and in consideration of the sum of dollars, lawful money of the United States of America, to me in hand paid, the receipt whereof is hereby acknowledged, I have this day sold to the following described real estate, and which said real estate is the property of county, and which is particularly described as follows, to wit:
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....., the said being the highest and best bidder at
said sale, and the said sum being the highest and best sum bid at said sale:

Now, therefore, know ye that I,, county treasurer of said
county of, state of Washington, in consideration of the premises
and by virtue of the statutes of the state of Washington, in such cases made and
provided, do hereby grant and convey unto heirs and
assigns, forever, the said real estate hereinbefore described, as fully and com-
pletely as the said party of the first part can by virtue of the premises convey
the same.

Given under my hand and seal of office this day of,
A. D. 190...

.....
County Treasurer.
By, Deputy.

An emergency exists and this act shall take effect immediately. [Amend-
ment, approved Mar. 9, 1903; L. 1903, p. 74.]

§ 1757. **Delinquent certificate—Appeals** close the certificate, but it is sufficient in
in cases to foreclose.—Laws 1897, page 186, such cases that the appellant give the or-
section 104, is inapplicable to an appeal dinary appeal bond: Meagher v. Hand, 28
by the holder of a delinquency certificate Wash. 332, 68 Pac. 892.
from a judgment denying his right to fore-

[§§ 1758, 1759, repealed by act of 1899; L. 1899, p. 302.]

§ 1760. **Duties of Certificate Holders.**

Every purchaser of a certificate of delinquency shall before applying for
judgment, pay all taxes that have accrued on the property included in said
certificate since the issuance of said certificate or any prior taxes that may re-
main due and unpaid on said property, and any purchaser of delinquent certifi-
cates that shall suffer a subsequent tax to become delinquent and a subsequent
certificate of delinquency to issue on the same property included in his certificate,
such first purchaser shall forfeit his rights thereunder to the subsequent pur-
chaser, and such subsequent purchaser shall at the time of obtaining his certifi-
cate redeem said first certificate of delinquency outstanding by depositing with
the county treasurer the amount of said first certificate with interest thereon
to the date of said redemption and the amount so paid in redemption shall be-
come a part of said subsequent certificate of delinquency and draw interest at
the rate of fifteen per cent per annum from the date of payment. Said holder
of a certificate of delinquency permitting a subsequent certificate to issue on
the same property shall, on notice from the county treasurer, surrender said
certificate of delinquency on payment to him of the redemption money paid by
the subsequent purchaser: Provided, That this section shall not apply to coun-
ties or municipalities. [Amendment, approved Mar. 6, 1899; L. 1899, p. 302.]

§ 1760. City may purchase at its sale for assessments.—In an action to foreclose street assessments, a decree providing that the city might purchase the lands at the foreclosure sale is not erroneous, when its charter authorizes the city to purchase, receive, hold and enjoy real and personal

property and dispose of the same for the public benefit, and the legislature has further authorized cities to bid in property in default of other bidders, when sold for special assessments: *City of New Whatcom v. Bellingham Bay Imp. Co.*, 16 Wash. 133, 698, 47 Pac. 236, 1102.

[§ 1763, repealed by act of 1899; L. 1899, p. 303.]

§ 1764. Effect of Redemption.

The receipt of the redemption money of any tract or lot by any purchaser, or by the county treasurer for the benefit of such purchaser or the return of the certificate of delinquency for cancellation, shall operate as a release of all the claims to said tract under or by virtue of the issuance of said certificate of delinquency, and the county treasurer, upon the receipt of any such redemption money, shall immediately indorse upon the proper records the fact that such taxes, penalties, interest and cost have been paid and the property therein described redeemed by said payment, and shall deliver to the person redeeming the same a certificate of redemption therefor. [Amendment, approved Mar. 6, 1899; L. 1899, p. 303.]

[§ 1766, repealed by act of 1899; L. 1899, p. 303.]

§ 1767. Deeds—Prima facie evidence of, etc.—A statute making a tax deed prima facie evidence of certain matters therein specified and providing that a judgment for a tax deed shall be conclusive evidence of its regularity and validity in collateral proceedings, excepting in cases where the

tax had been paid or the real estate was not liable, is valid as a proper exercise of legislative power and does not amount to a taking of property without due process of law: *State ex rel. v. Whittlesey*, 17 Wash. 449, 50 Pac. 119.

[§ 1768, repealed by act of 1899; L. 1899, p. 303.]

§ 1769. Procedure as to Prior Years.

All lots, tracts and parcels of land upon which taxes remain due and unpaid at the date of the approval of this act, except the taxes for the year 1898, shall be deemed to be delinquent under the provisions of this act, under [and] the same proceedings may be had to enforce the payment of such unpaid taxes, with penalty, interest and cost, and payment enforced and liens foreclosed under and by virtue of the provisions of this act. For purposes of foreclosure under this act, the date of delinquency shall be construed to mean the date when the taxes first became delinquent: Provided, That on all certificates of delinquency issued for the taxes of 1895 and prior years, proceedings for foreclosure under the provisions of this act may commence on and after December 1, 1900, and not sooner; and on certificates of delinquency for 1895, and prior years, held by the county, proceedings must be commenced on or before the first day of January, 1902, by the several county treasurers under the provisions of this act. At all sales of property for which certificates of delinquency are held by the county if no other bids are received, the county shall be considered a bidder for the full area of each tract or lot to the amount of all taxes, penalties, interests and costs due thereon, and where no bidder appears, acquire title thereto as absolutely as if purchased by an individual under the provisions of this act; "all bidders except the county at sales of property for which certificates of delinquency are held by

the county shall pay the full amount of taxes, penalties, interests and costs for which judgment is rendered, together with all taxes, interests, [and] costs for all subsequent years due on said property at the date of sale."

An emergency exists, and this act shall take effect immediately. [Amended by act of 1899; L. 1899, p. 303; amendment, approved Mar. 20, 1901; L. 1901, p. 386.]

[§§ 1770, 1771, repealed by act 1899; L. 1899, p. 304.]

§ 1771. **Remission of penalties and interest for 1895, etc.**—Section 118, Laws 1897, page 192, providing that all costs, penalties and interest in excess of six per cent per annum on all taxes levied for the year 1895 and previous years be remitted,

in case payment is made prior to November 30, 1897, does not include assessments levied for local improvements: *City of Seattle v. Whittlesey*, 17 Wash. 292, 49 Pac. 489.

§ 1772. **Fees of Officers.**

The treasurer shall upon the issuance of a certificate of delinquency collect fifty cents. 2. For making a deed, to include not more than ten tracts or lots, including all services rendered, including sales and posting notices, three dollars. 3. The clerk of the court shall upon filing application for judgment and for all services rendered to and including judgments, collect two dollars. 4. The clerk of the court shall collect from each contestant at time of filing such contest, five dollars. [Amendment, approved Mar. 1899; L. 1899, p. 304.]

§ 1772a. **Land Deeded to County to be Stricken from Roll.**

All property deeded to the county under the provisions of this act shall be stricken from the tax rolls as county property and exempt from taxation and shall not be again assessed or taxed while the property of the county. [New section enacted by L. 1899; approved Mar. 6, 1899, p. 304.]

§ 1772b. **No Claim for Subsequent Taxes Against County.**

No claims shall ever be allowed against the county from any municipality, school district, road district or other taxing district for taxes levied on property acquired by the county by tax deed under the provisions of this act, but all taxes shall at the time of deeding said property be thereby canceled: Provided, That the proceeds of any sale of any property acquired by the county by tax deed shall be justly apportioned to the various funds existing at the date of the sale, in the territory in which such property is located, according to the tax levies of the year last in process of collection. [New section enacted by L. 1899, c. 141, p. 304, § 28; approved Mar. 6, 1899.]

§ 1772c. **Land Acquired by County may be Sold by Commissioners.**

Real property hereafter or heretofore acquired by the several counties of the state of Washington for taxes shall be subject to sale by order of the board of county commissioners of the several counties of this state at any time after the counties shall have received a deed therefor, when in the judgment of the board of county commissioners they deem it for the best interests of the county to sell the same, and when the board of county commissioners desires to sell any property so acquired, they shall enter an order upon their records directing the county treasurer to sell such portions of such property as they may determine

to sell from time to time, and it shall be the duty of the county treasurer upon receipt of such order to publish a notice of the sale of such property in a weekly newspaper printed and published in the county where the land is situated for three consecutive publications: Provided, That in counties where there is no newspaper published, the treasurer of such county shall cause such notice, to be published in some newspaper in the state of general circulation in such county having no resident newspaper, and the property to be sold shall be set forth and described in said notice, together with the time and place and terms of sale, which said sale shall be made at the door of the county courthouse in the county in which the land is situated between the hours of nine o'clock A. M. and four o'clock P. M., and all sales so made shall be for cash to the highest and best bidder at such sale, and sales to be made under the provisions of this act may be adjourned from day to day by the county treasurer by public announcement made by the treasurer at the time and place designated in the notice of such sale, or at the time and place to which said sale may be adjourned, and the county treasurer shall make and execute under his hand and seal to the purchaser of the property at such sale a deed: Provided, further, That all sales now being made under existing laws shall be completed according to the laws in existence and in force prior to the passage of this act. [New section enacted 1899; L. 1899, c. 141, p. 304; L. 1899, approved Mar. 6, 1899; amendment, approved Mar. 6, 1903; L. 1903, p. 73.]

§ 1772d. Certificates Issued to County Assignable.

Certificates of delinquency issued to counties shall be assignable to individuals by the county treasurer on demand and payment of the full amount due thereon, and said assignee shall have the same rights and proceed in the same manner as if said certificate had been originally issued to him. [New section enacted 1899; L. 1899, c. 141, p. 305, approved Mar. 6, 1899.]

§ 1772e. Effect of Assignment by County.

Certificates of delinquency shall be assignable in law, and an assignment thereof shall rest in the assignee or his legal representatives all the right and title of the original purchaser. [New section enacted 1899; L. 1899, c. 141, p. 305, approved Mar. 6, 1899.]

§ 1774. Remission of Taxes.

That all costs, penalties and interest in excess of six per cent per annum from the date of delinquency, on all state, county, municipal, school district and road district taxes which became delinquent during the year 1897, and previous years within this state on lands which have not been sold at tax sale or certificates of delinquency issued to parties other than the county or municipality for which the original tax was levied, be and are hereby remitted; and the county treasurers in the respective counties in this state are hereby authorized and directed to receive and receipt for the net amount of such taxes as originally levied; together with the interest herein provided: Provided, That in order to receive the benefit of the remission herein provided for, all such delinquent taxes shall be paid on or before the 1st day of November, 1899, and if not so paid then all the penalties, costs and interest now charged against the

same shall be and remain a charge against such delinquent property and shall be proceeded against as now provided by law.

An emergency exists and this act shall take effect immediately. [Approved Mar. 8, 1899; L. 1899, p. 339.]

Compromise of Taxes.

The board of county commissioners of any county in the state is hereby authorized to compromise and settle on an equitable basis any unpaid taxes levied and assessed against any mining property in their respective counties for the years 1899, 1900, 1901 and 1902: Provided, That no unpaid taxes for any of said years on said mining property shall be compromised or settled for less than thirty-five per cent of the taxes, interest, penalties and costs charged against said property, nor shall said taxes be compromised for less than thirty-five per cent of the taxes, interest, penalties and costs due any fund: Provided, further, That this act shall not apply to or affect any property upon which certificates of delinquency may be outstanding.

The board of county commissioners making such compromise and settlement herein authorized shall thereafter immediately make and file with the state auditor a detailed statement of the same.

The state auditor shall, in certifying to the county auditors in counties where taxes shall be compromised in pursuance of this act, deduct from the amounts due to each fund and unpaid from such county for the seventh preceding year any loss sustained by such funds on account of any such settlement and compromise.

An emergency is declared to exist and this act shall be in force from and after its approval by the governor. [Approved, March 12, 1903; L. 1903, p. 101.]

[§ 1801, repealed by act 1899; L. 1899, p. 305.]

§ 1781. Taxes—Cities of first class—County treasurer to collect.—The act of March 10, 1897 (Laws 1897, p. 77), which requires the county treasurer to collect such assessments for street improvements as are certified to him by the legislative body of cities of the first class within his county, is not unconstitutional as rendering taxation unequal and ununiform, on the ground that it provides no method of reimbursement to the county for its expense in collecting such assessments, thus tending to throw the burden of cost upon the general taxpayer of the county, whose property is not benefited by the special improvement, since the constitutional requirement as to equality and uniformity in taxation applies only to the mode and rate of assessment, and is not a restriction upon the legislative power to direct the purposes for which tax collections may be expended: *State ex rel. Olmstead v. Mudgett*, 21 Wash. 99, 57 Pac. 351.

Where a law of the legislature has imposed the duty on county treasurers of collecting the taxes for cities of the first class and provided the amount of compensation to be paid therefor by the city to the

county, such compensation will be presumed by the courts, in the absence of a showing to the contrary, to be ample and adequate for additional services of a similar nature imposed on the counties by a subsequent law: *Id.*

§ 1786. Equalization.—Section 9 of the act of March 9, 1893, as amended by the act of March 21, 1895, providing that, for the equalization of taxes in cities of the first class, a committee of three from the city council shall be selected to act with the county board of equalization, is not impliedly repealed by the general revenue law of 1897, which provides that the county commissioners shall constitute the board of equalization, since such provision is intended to be of general application, and is in the same terms as the like provision in the general revenue law of 1893, and must be construed together with the special laws as in *pari materia*, in the absence of an express repealing clause: *Pierce Co. ex rel. Maloney v. Spike*, 19 Wash. 653, 54 Pac. 41.

§ 1790. Cities and towns—Expense and indebtedness funds.—This section is construed by the supreme court in *Townsend*

Light Co. v. Hill, 24 Wash. 469, 64 Pac. 778.

§ 1840. **State officers—Creation of deficiencies.**—Section 22 of the act of March 27, 1890, empowering the state auditor to issue certificates of indebtedness in cases where there is no appropriation for claims audited and allowed by him, was repealed by Laws 1895, page 58, providing that “it shall be unlawful for any of the state officers or trustees, managers, directors, superintendents or boards of commissioners of any of the public institutions of the

state of Washington or for the officers of any of the departments of the state of Washington, to create a deficiency, incur liability, or to expend a greater sum of money than is appropriated by the legislature for the use of said public institution or department”: State ex rel. Rippetoe v. Cheetham, 17 Wash. 483, 49 Pac. 1072.

Laws 1895, page 58, applies to cases in which no appropriation has been made, and to those in which an appropriation by the legislature has been vetoed by the governor: Id.

§ 1880. **Of Finance—Validating Indebtedness by Municipalities.**

What Invalidity may be Cured.

Any county, city or town in this state may ratify in the manner prescribed in this act, the attempted incurring of any indebtedness of such county, city or town, by the issuing of warrants, making of contracts, or creations of other evidences of indebtedness on the part of such county, city or town by the corporate authorities thereof at any time prior to the passage of this act, when the only ground of the invalidity of such indebtedness so to be ratified is that, at the time of such attempted incurring thereof, the same, together with all other then existing indebtedness of such county, city or town, exceeded one and one-half per centum of the taxable property in such county, city or town, ascertained by the last assessment for state and county purposes previous to the attempted incurring of such indebtedness, except that in incorporated cities the assessment shall be taken from the last assessment for city purposes, and that such indebtedness was so attempted to be incurred without the assent of three-fifths of the voters therein voting at an election held for that purpose.

Mode of Proceeding.

Whenever the corporate authorities of any such county, city or town shall deem it advisable that the ratification authorized by this act shall be obtained, they shall provide therefor by ordinance or resolution, which shall specify separately the amount of each distinct class of such indebtedness so to be ratified, the date or period of the attempted incurring by the corporate authorities of each separate class thereof, and the general nature of the indebtedness comprised in each distinct class and shall provide for the holding of an election for that purpose, at which the attempted incurring of such indebtedness shall be submitted to the voters in such county, city or town for ratification or approval, of which election notice, to be provided for in such ordinance or resolution, shall be given by publishing the same in a newspaper published in such county, city or town once a week for at least four successive weeks, and if no newspaper is published in such city or town, then by publishing such notice for the same period in a newspaper published in the county wherein such city or town is situate and of general circulation therein. Each distinct class of such indebtedness so specified shall be the subject of a distinct vote in favor of or against the ratification thereof, and such vote shall designate the class of indebtedness referred to by the description thereof used and the amount specified in the ordinance or resolution.

Requisite Majority of Votes.

If at an election held as provided for in section 2 of this act, three-fifths of the voters in such county, city or town, voting at such election, shall vote in favor of the ratification of any distinct class of such indebtedness, specified in the ordinance or resolution providing for such election, then such indebtedness so ratified shall thereby become and is hereby declared to be validated and a binding obligation upon such county, city or town, when the only ground of the previous invalidity of such indebtedness is that at the time of the incurring thereof so ratified, the same, together with all other then existing indebtedness of such county, city or town, exceeded one and one-half per centum of the taxable property in such county, city or town ascertained by the last previous assessment for state and county purposes (except that in incorporated cities the assessment shall be taken from the last assessment for city purposes): Provided. That neither anything in this act contained nor the vote cast at any such election shall be deemed to validate or authorize any indebtedness, which, together with all other indebtedness of such county, city or town existing at the time of the attempted incurring of the same exceeded any constitutional limitation of indebtedness which might be incurred with the assent of three-fifths of the voters in such county, city or town voting at an election to be held for that purpose: And provided, further, That this act shall apply only to indebtedness attempted to be incurred prior to the passage hereof.

Definition of Terms.

The words corporate authorities used in this act shall be held to mean the legislative or managing body of any county, city or town. [Approved Mar. 6, 1901; L. 1901, p. 61.]

§ 1892. Funding Bonds.

Bonds may be issued without notice under the provisions of this act, for the purpose of funding, or refunding, outstanding bonds when exchanged at not less than par value, but before any other bonds shall be issued under the provisions of this act, such corporate authorities shall cause a notice of the proposed issuance of such bonds to be given by publication in a daily or weekly newspaper of general circulation published in the county proposing to issue such bonds, or in which county such city or town is situated, at least once a week for four consecutive weeks. Such notice shall state for what purpose and the total amount for which it is so proposed to issue bonds, and if to be divided into series, then into how many series the same are to be divided, and the amount of and period for which each series is to run, also the hour and day for considering bids for such bonds, and asking bidders to name the price and rate of interest at which they will purchase such bonds, and if such bonds are to be divided into series then to name such price and rate for each series of such bonds, separately; and at the time named in such notice it shall be the duty of the corporate authorities to meet with the treasurer of the county, city or town proposing to issue such bonds, at his office, and with him open said bids, and shall sell said bonds to the person or persons making the most advantageous offer therefor: Provided, however, That said bonds shall never be sold or dis-

posed of below par, and such corporate authorities shall have the right to reject any and all bids, and if all said bids shall be rejected, such corporate authorities shall proceed to readvertise the sale of said bonds in the manner herein provided. [Amendment, approved Mar. 6, 1901; L. 1901, p. 66.]

§§ 1890-1895. Funding bonds—Notice of issuance.—Under the provisions of Laws 1895, page 465 (Bal. Code, §§ 1890-1895), authorizing the issuance of funding bonds, either in case of sale or of exchange for outstanding warrants, notice thereof calling for bids is necessary as much in the case of an exchange as in the case of a sale of bonds: *Duryee v. Friars*, 18 Wash. 55, 50 Pac. 583.

§ 1898. Municipal corporations may borrow money in anticipation of revenue. Laws 1895, page 297, authorizing municipalities to provide temporary funds for current expenses in anticipation of future revenues, and providing for the payment of the obligations issued therefor in lawful money of the United States, does not apply to warrants issued to refund an outstanding warrant indebtedness: *Kenyon v. Spokane*, 17 Wash. 57, 48 Pac. 783.

§ 1926. Militia—Companies—Members.

In time of peace, the national guard of Washington shall consist of not less than twelve nor more than sixteen companies of infantry, one troop of cavalry, one battery of light artillery, and such bands, signal corps and medical department as are hereinafter provided for. The said companies, troop and battery may be allotted and stationed in such localities of the state as the necessity and advantage of the service require, in the discretion of the commander in chief, with reference to the means of rapid concentration, and may be arranged into regiments, or battalions with power to alter and change the organization to conform to any system of drill or instruction, now or hereafter adopted for the army of the United States, as the commander in chief may deem necessary. Infantry, cavalry and artillery companies shall consist of not less than thirty-two noncommissioned officers, musicians and privates; infantry companies of not more than one hundred and forty-five, cavalry troop of not more than one hundred and battery of light artillery of not more than one hundred and twenty noncommissioned officers, musicians and privates. The commander in chief may limit the maximum membership of any company, troop or battery at any time to a less number than one hundred and forty-five, one hundred, and one hundred and twenty respectively, at his discretion. Any company presenting less than the minimum number of thirty-two enlisted men, at any stated muster or inspection, shall be disbanded by order of the commander in chief. [Amendment, approved Mar. 16, 1901; L. 1901, p. 156.]

§ 1929. Militia—Brigade Organization.

The national guard of this state may, in the discretion of the commander in chief, be organized into one brigade. If thus organized the brigade officers shall be as follows: One brigadier general and staff consisting of one assistant adjutant general, one assistant chief engineer, one brigade inspector, one judge advocate, one brigade quartermaster, one brigade commissary, one inspector of rifle practice and one chief signal officer, each with the rank of lieutenant colonel, and three aides de camp, with the rank of first lieutenant: Provided, That the national guard of this state shall not be organized into a brigade unless the strength of the national guard shall be two or more regiments.

§ 1930. Officers of Infantry.

That a regiment of infantry shall consist of one colonel, one lieutenant colonel, three majors, fifteen captains, fifteen first lieutenants and fifteen second lieutenants, one sergeant major, one quartermaster sergeant, one commissary sergeant, three battalion sergeants major, two color sergeants, with rank, pay and allowance of battalion sergeants major, and twelve companies organized into three battalions of four companies each. Of the officers herein provided, the captains and lieutenants not required for duty with the companies shall be available for detail as regimental and battalion staff officers, and such other details as may be authorized by law or regulations: Provided, That the commander in chief may increase or decrease the number of officers and noncommissioned officers at his discretion. [Amendment, approved Mar. 16, 1901; L. 1901, p. 156.]

§ 1932. Number of Officers of Company, Troop or Battery.

The number of officers and noncommissioned officers in any company, troop or battery, shall be prescribed from time to time by the commander in chief to correspond to similar organization in the regular army. [Amendment, approved Mar. 16, 1903; L. 1903, p. 314, § 1.]

§ 1933. Provides for Band.

The commanding officer of a regiment may enlist a band of not less than sixteen nor more than thirty-six musicians, who shall be entitled to the clothing and allowances prescribed for other enlisted men of the same rank. The distribution of noncommissioned officers and privates in said band, and the organization thereof, shall be that now or hereafter provided for similar organizations in the regular army. Said band shall be subject to the orders of the regimental commander, who may discharge and recruit said band at his discretion. The duty of said band shall be to furnish music for the troops and perform such other duty as may be ordered by proper military authority. Members of bands shall be subject to all laws and regulations for the government of the national guard. [Amendment, approved Mar. 16, 1903; L. 1903, p. 315, § 2.]

§ 1934. Provision for Signal Corps.

A signal corps company shall be organized as provided for the organization of a similar corps in the regular army. The number of officers and men composing such company may be increased or decreased from time to time in the discretion of the commander in chief. At no time shall the number exceed the authorized strength of one company. [Amendment, approved Mar. 16, 1903; L. 1903, p. 315, § 3.]

§ 1939. Medical Department.

The medical department of the national guard of Washington shall consist of one surgeon-general with the rank of colonel, one surgeon with rank of major for each regiment, with such assistant surgeons of such rank as may now or hereafter be provided for service with similar organizations in the regular army. As many acting assistant surgeons shall be appointed as may be necessary in

the discretion of the commander in chief, and said acting assistant surgeons shall occupy the same relative positions as contract surgeons in the regular army. [Amendment, approved Mar. 16, 1903; L. 1903, p. 315, § 4.]

§ 1950. Duties of Adjutant General.

The adjutant general must execute an official bond to the state of Washington for the sum of \$20,000 conditioned for the faithful performance of the duties of his office. His salary shall be \$2,000 per year, payable monthly, and his necessary expenses and the expenses of his department to be limited by the board of military auditors. His duties shall be: To keep and preserve the books, arms, accoutrements, ammunition and other military property belonging to the state not issued to the various companies. To keep on file in his office all returns and reports made by and to him. To keep an account in the manner directed by the commander in chief, of all moneys received and disbursed by him. To attest all commissions issued to military officers. To make out and transmit militia returns prescribed by acts of Congress, and to perform such other duties as are required by the provisions of this act, and such as the commander in chief may direct. He shall make quarterly reports and an annual report on or before the first day of January of each year of the commander in chief, upon the condition of the national guard and a detailed statement of all expenses of his department during the preceding year and the present condition of all military property under his charge. He shall cause this act to be printed, indexed, annotated, bound in pamphlet form and distributed, one copy to each commissioned officer in the national guard. He shall also furnish to brigade, regimental, battalion and company commanders and to the judge advocates, each, a copy of the rules and regulations of the United States army. The adjutant general shall have a seal and all copies, orders, record and papers in his office, duly certified and authenticated under said seal shall be evidence in all cases in like manner as if the originals were produced. [Amendment, approved Mar. 16, 1901; L. 1901, p. 158.]

§ 1953. Examining Board—Examination.

All officers shall be commissioned by the commander in chief and no person shall be commissioned in the national guard of this state unless he is a citizen of the United States and of the state of Washington of twenty-one years of age or upwards. No commission shall be issued to any person in the national guard save to general officers and the staff of the commander in chief, until the officer appointed shall have passed a satisfactory examination before a board as to his knowledge of military duties, proportionate to the office to be held, his general knowledge and his fitness for the service. If such a person shall be adjudged unqualified for such office, another person shall after due notice of such adverse decision, be appointed. The commander in chief shall appoint such examining boards and may remove any member thereof and fill any vacancy thereon, such examining boards to be appointed from any corps, and to consist of three officers, one of whom shall be a medical officer: Provided, That whenever practicable,

they shall be selected from grades superior to the office to be examined. Such board shall have the same power to compel the attendance of witnesses, administer oaths, and take testimony as is possessed by general courts-martial. No person shall be eligible for appointment to office in the national guard for the period of one year after he shall have been reported adversely by an examining board. Any officer required by law or by orders to appear before such boards shall do so at his own expense. [Amendment, approved Mar. 16, 1901; L. 1901, p. 159.]

§ 1954. How Officers Chosen.

The military officers of the state shall be chosen as follows: The adjutant general shall be appointed by the commander in chief with the advice and consent of the senate. No person shall be eligible as adjutant general who has not served as an officer at least three years in the aggregate in either the national guard of this state or the regular army of the United States, and who is not at the time of his appointment a field, line or regimental staff officer not below the rank of captain in the national guard of this state: Provided, That any adjutant general may be reappointed from time to time at the expiration of his term in the discretion of the commander in chief. Any vacancy in said office from any cause may be filled by the commander in chief in accordance with the preceding provisions, subject to confirmation or rejection by the senate at the next meeting of the legislature thereafter. Whenever in this act service in the volunteer or regular army of the United States, or the national guard of this or any other state is named as a qualification for any commissioned office, service with the First Washington Volunteer Infantry until muster out of that organization shall be considered to equal three years' service in the national guard of this state. Field officers of regiments shall be appointed by the commander in chief, and no person shall be eligible as field officer who has not served as an officer at least three years in the aggregate in either the national guard of this state or the army of the United States, and who is not at the time of his appointment of the rank of captain in the national guard of this state. Whenever a vacancy occurs in a commissioned office of the national guard of Washington below the rank of major, except among officers on duty as a regimental staff, the officer next in rank in the company shall be ordered before an examining board, and upon passing a satisfactory examination shall be commissioned to fill the vacancy existing in said company. Vacancies among the officers on duty as regimental staff shall be filled by appointment of an officer from the next lower grade of such staff upon proper examination. Vacancies among second lieutenants of such staff shall be filled by appointment from regimental non-commissioned staff upon proper examination. Vacancies in the office of second lieutenant of a company shall be filled in the following manner: All the sergeants of the company shall be eligible for appointment, and the examining board shall order them to appear before it for a competitive examination for the office: Provided, That any sergeant of said company who may have been appointed a noncommissioned staff officer shall also be eligible for examination and appointment to fill a vacancy in the company of which he was originally a sergeant.

The sergeant whom the board considers to be the best qualified for the position after the examination shall be appointed to fill the vacancy. This examination shall be both practical and written. The warrant of any sergeant competing in the examination shall not be affected by his failure to secure promotion. No commissioned officer shall be recommended for promotion who fails to make a record of at least seventy-five per cent on examination, and where said failure has occurred the officer failing shall be recommended for honorable discharge by the examining board, and the officer next in rank shall be ordered before a board for examination for promotion. Whenever a vacancy shall exist in any field office in any regiment or battalion not part of a regiment, the vacancy shall be filled in the manner herein provided: Provided, Whenever a vacancy occurs in any office by reason of the expiration of the term of office such officer may, if found qualified upon examination, be reappointed to fill the vacancy. No person shall be eligible as captain of a company, unless he shall have served at least one year as an officer, and three years in the aggregate in the national guard of this state or some other state of the Union, or in the volunteer or regular army of the United States, or is a graduate of a military college requiring at least three years military service. Service in two or more of these branches may be added together to secure this qualification. For the purposes of this act the word company or companies shall apply to and include the cavalry, infantry and artillery forces. Company commanders shall give bond in the sum of \$2,000, in form to be prescribed by the adjutant general, conditioned for the faithful discharge of the duties of their respective offices, and the proper care and preservation of the state funds and property in their charge. The commander in chief shall appoint his staff, and with the exception of the adjutant general, they shall hold office at his pleasure and their commissions shall expire with the term of the governor appointing them. The adjutant general shall be appointed as hereinbefore provided, and shall hold office for four years and until his successor is appointed and qualified. In the absence of specific orders of the commander in chief to the contrary, the adjutant general shall perform all departmental duties designated for members of the governor's staff. No person shall be appointed a member of the governor's staff except as judge advocate or military secretary, unless he shall have served three years in the national guard of this or some other state or in the army of the United States. [Amended by act of 1901; L. 1901, p. 159, § 6; amendment, approved Mar. 16, 1903; L. 1903, p. 315, § 5.]

§ 1955. Noncommissioned Officers—How and by Whom Selected.

Commanding officers of regiments and separate battalions, not parts of regiments, shall appoint and warrant the noncommissioned staff officers of their respective regiments and battalions, and they shall appoint and warrant the noncommissioned officers of the companies of their respective regiments and battalions from the members thereof upon the nomination of the company commanders. All noncommissioned officers shall be appointed for length of service and military qualifications. They may be selected by competitive ex-

amination at the discretion of the company commander. [Amendment, approved Mar. 16, 1903; L. 1903, p. 318, § 6.]

[§ 1957, repealed by act of 1903, c. 155, p. 318, § 7.]

§ 1963. New Companies, how Admitted.

No company other than those now organized and in the service as part of the national guard shall be admitted into the national guard of Washington, except upon recommendation of the military board approved by the commander in chief, and in the following manner: Upon application of a citizen of the state of Washington from an approved locality, said applicant having served one year as a commissioned officer, and three years in the aggregate in the national guard of Washington, or three years as a commissioned officer in the national guard of another state, or three years in the volunteer or regular army of the United States, he shall be required to appear before an examining board for examination as to his physical and mental qualifications to become captain of a company; said examination to be that provided in the military code of the state, and before an examining board appointed in accordance with the same. If such applicant shall attain a record of seventy-five per cent or better in such examination he shall be appointed and commissioned captain in the national guard of Washington, and authorized to enlist a company. If there be more than one of said applicants from the same point, all whose applications are received before an examination is ordered, shall appear for examination, and the one who in the judgment of the examining board is the best qualified, shall be selected and authorized to enlist a company as herein provided. Upon notification from him of the enlistment of not less than forty able-bodied men, and upon approval of such enlistments by the adjutant general, the company shall be mustered into the national guard of Washington. Thirty days after the date of the muster in, all of such enlisted men may appear before an examining board for the purpose of engaging in a competitive examination to determine and select a first lieutenant and a second lieutenant for said company. All members of the company who are regularly enlisted at the date of said examination shall be eligible for appointment and commission. None shall be compelled to take said examination, but not less than six must take it, or no appointment can take place. Such company commander may not nominate for appointment noncommissioned officers for such company until after said examination shall have taken place, but may designate by company order such men of the company as acting noncommissioned officers as he may see fit. Upon conclusion of the competitive examination, the candidate who in the judgment of the board is best qualified shall be appointed and commissioned first lieutenant of the national guard of Washington and assigned to duty with the company of which he was originally a member. The candidate, who in the judgment of the board, is best qualified for second lieutenant shall be appointed and commissioned to such grade in the national guard of Washington, and assigned to duty with such company. Until the first and second lieutenants of such newly organized company shall have been appointed and commissioned, the company shall be attached directly

to general headquarters. Immediately upon appointment of the first and second lieutenants, the company commander may nominate and secure the appointment of noncommissioned officers for the company in the way prescribed by law and the regulations: Provided, That when in the judgment of the commander in chief an emergency exists, the examination for first and second lieutenants make [may] take place immediately upon muster in of the company. The military board shall consist of the commander in chief, the adjutant general and the senior field officer. [Amended by act 1901; L. 1901, c. 78 p. 162, § 7; amendment, approved Mar. 16, 1903; L. 1903, p. 318, § 8.]

§ 1964. Enlistments.

All enlistments and re-enlistments in the national guard of Washington shall be for the term of three years, and at the expiration of their terms, men, if discharged with good character, may re-enlist, either immediately, or at any time thereafter. The qualifications for enlistment and re-enlistment shall correspond as nearly as possible to those fixed for similar service in the regular army. Applicants for enlistment must be citizens of the United States and of the state of Washington, and of good moral character. Before any applicant shall be enlisted or re-enlisted, he shall be subjected to a strict physical examination by a medical officer or by an acting assistant surgeon, and the certificate of such medical officer or acting assistant surgeon shall accompany his enlistment papers. Any enlisted man may at any time be ordered by his commanding officer to appear for physical examination, and if not up to requirements he shall be discharged from the service. Every enlisted man shall continue to be held to duty, and shall retain rank and be eligible to promotion, after the expiration of his term of enlistment or re-enlistment, until he is actually discharged. When an organization is consolidated or disbanded, the enlisted men thereof discharged for such reason, who shall thereafter re-enter the service within 30 days shall have allowed as part of their terms of service, the time already served. Company commanders and such other officers as may be designated by the commander-in-chief, shall act as recruiting officers. Applications for enlistment shall be in writing upon forms to be prescribed by the adjutant general. [Amendment, approved Mar. 16, 1903; L. 1903, p. 320, § 9.]

§ 1975. Discharge of Members.

The company commander may recommend the discharge for the good of the service of any enlisted member of his command, and must state the reason for such recommendation and give notice thereof to such member in the manner of giving warning for duty. Any member so recommended for discharge, may appeal from such recommendation to the adjutant general through the regimental and battalion commanders. Noncommissioned staff officers may be discharged at any time by the officer appointing them. Noncommissioned officers may be reduced to the ranks by the commanding officer of the regiment, or in the case of a separate battalion, not part of a regiment, by the commanding officer of that battalion, or by sentence of court martial. [Amendment, approved Mar. 16, 1903; L. 1903, p. 320, § 10.]

§ 1981. Allowances to Companies.

The arms, uniforms and equipment of the national guard of Washington shall be prescribed by the adjutant general. They shall as nearly as possible conform to the arms, uniforms and equipment now or hereafter in use by the regular army of the United States for similar service, except that the full dress uniform shall not be worn. Every commissioned officer shall provide himself with the arms, uniforms and equipment prescribed within thirty days from the receipt of his commission, or he will be considered to have resigned same. All officers now commissioned or who shall hereafter be commissioned, shall receive from the state annually the sum of thirty dollars, mounted officers the sum of forty dollars, to assist in uniforming and equipping themselves, but not until they have served as such as [a] calendar year, and shall have furnished satisfactory evidence to the adjutant general that they are properly armed, uniformed and equipped. The first annual payment on this account shall be for the year 1903. All noncommissioned officers, musicians and privates shall be uniformed, armed and equipped at the expense of the state. Whoever shall secrete, sell, dispose of, offer for sale, purchase, retain after proper demand made, or in any manner pawn or pledge any military property which shall have been issued under the provisions of this act, and any person not a member of the national guard, except organizations especially authorized to do so, who shall wear any uniform or designation of grade similar to those in use by the national guard, issued or authorized under the provisions of this act, shall forfeit to the people of this state \$100, and any member of the national guard who shall, when not on duty wear any such uniform or equipments without permission of the commanding officer, shall be subject to a fine of not more than \$10, which fine shall forthwith be paid over to the state treasurer. [Amended by act of 1901; L. 1901, c. 78, p. 162, § 8; amendment, approved Mar. 16, 1903; L. 1903, p. 321, § 11.]

§ 1990. Auditors.

The commander in chief, state auditor and the adjutant general, shall constitute a board of military auditors. The commander in chief is president of the board and the adjutant general is secretary. The board must have a seal which must be attached to all accounts audited by them. [Amendment, approved Mar. 16, 1901; L. 1901, p. 163.]

§ 1991. Allowances to Company Commanders.

There must be audited and allowed by the board of military auditors, to be paid quarterly out of the special military fund to the commanding officer of each infantry, cavalry and artillery company of the national guard of Washington, performing the duty required by law, for armory rent and other incidental expenses, the sum of forty dollars per month, or so much thereof as may be necessary, and to each band and each signal corps company twenty-five dollars per month, or so much thereof as may be necessary: Provided, That in cities where are located armories owned by the state such allowances shall be paid to the officer or officers selected by the commander in chief to have charge

of such armories, under such regulations for the government of the same as may hereafter be adopted. The officers to whom such allowances are paid shall render to the adjutant general quarterly reports showing expenditures for preceding quarter before said allowance is paid. [Amendment, approved Mar. 16, 1903; L. 1903, p. 322, § 12.]

§ 1992. Allowance to Officers, Brigade and Regiment.

Necessary expenses of a general, brigade, regimental or battalion headquarters shall be audited and allowed by the board of military auditors and paid as other military bills, and such expense shall in no event exceed for brigade and regimental headquarters \$25 per month, each, and for each battalion headquarters, \$5 per month. [Amendment, approved Mar. 16, 1901; L. 1901, p. 163.]

§ 1993. Per Diem—Subsistence and Transportation.

There shall be provided by the state transportation for all officers, and transportation and subsistence for all enlisted men, who shall be ordered out for encampment and field duty, or assembled for duty in case of riot, tumult or breach of the peace, war, insurrection, invasion or imminent danger thereof and in addition thereto officers and men upon such duty shall receive pay from the state according to the following schedule: To all commissioned officers, the same pay and allowances as for commissioned officers of the regular army of corresponding grade, branch and term of service. Chief musicians, each \$5 per day. Regimental and battalion noncommissioned staff officers, hospital stewards, first class sergeants of the signal corps, first sergeants, company quartermaster sergeants, musicians who are members of enlisted bands, and company cooks, each \$3.00 per day; sergeants of infantry, cavalry and artillery, second class sergeants of the signal corps, each \$2.00 per day; corporals of infantry, cavalry and artillery, acting hospital stewards and first class privates of the signal corps, each \$1.75 per day. Musicians and privates of infantry, cavalry, artillery, hospital corps and signal corps, each \$1.50 per day. For each re-enlistment after serving a full term of three years there shall be added ten per cent, and service for a full term of enlistment with the regular or volunteer army of the United States, or with the First Washington Volunteer Infantry shall be considered equivalent to a full term of enlistment in the national guard, and recruits proving such service shall be allowed ten per cent additional on their pay: Provided, That this schedule of pay shall apply only to the first thirty days of any particular tour of duty, and after the thirtieth day of such tour officers and men alike shall receive the pay allowed officers and men in the regular army of corresponding grade and term of service. Necessary transportation, quartermaster's stores and subsistence for troops when ordered on duty, shall be contracted for by proper officers and paid for as other military bills. Enlisted men mounted and equipped shall be allowed \$1.50 per day, or as much thereof as may be necessary for each horse actually used by them. Commissioned officers will provide their own subsistence and horses. Extra duty pay to men detailed as clerks and on similar duty may be allowed by the command-

ing officer of troops on duty, but in no case shall such pay and extra duty pay exceed \$3.00 per day, and such extra service shall not be allowed after thirty days of continuous service. [Amended by act of 1901; L. 1901, c. 78, p. 163, § 11; amendment, approved Mar. 16, 1903; L. 1903, p. 322, § 13.]

§ 2000. Meetings—Drill—Instruction.

Each and every company organized under the provisions of this act shall meet at least twice in each month for drill and inspection. In addition to such drills the commanding officer of any organization may require the officers and enlisted men of his organization to meet for drills and instruction at such times and places as he may appoint. [Amendment, approved Mar. 16, 1903; L. 1903, p. 323, § 14.]

Repealed: Chap. 122, Sec. 6, Laws '07.
§ 2000a. Target Practice.

For the purpose of encouraging target practice the following schedule of payment is adopted for officers and men engaged in such work: For every shot fired upon a state range under direction of a commissioned officer, proper record of which is furnished to the adjutant general, to each officer and man firing same, three cents: Provided, No payment shall be made for less than fifty shots or more than two hundred and fifty shots in any one year. [Act of 1903; approved Mar. 16, 1903, p. 324, § 16.]

§ 2003d. Disposition of Funds from Sales of Supplies.

That money derived from the sale of unserviceable or otherwise unavailable military stores belonging to the state of Washington, or directly or indirectly coming from any appropriation from the military fund, shall be deposited with the state treasurer to the credit of the military fund. [Act of 1903; L. 1903, approved Mar. 16, 1903, p. 324, § 17.]

§ 2010. Commander in Chief—Duties of and Powers.

The commander in chief shall have power in cases of insurrection, invasion, tumult, riot or breach of the peace, or imminent danger thereof, resistance to process, or in aid of the civil authorities, to order into the actual service of the state, the national guard, or any part thereof, or the reserve militia, or any part thereof, that he may deem proper; and all members thereof who shall be ordered out by any proper authority for such service shall not be subject to arrest, nor liable civilly or criminally for any act or acts done by them in pursuance of orders from their commanding officers. The commander in chief shall have power in case of war or imminent danger thereof, when called upon by the President of the United States for volunteers, to order out the national guard of Washington for service of the United States, and in the event of such call the organized national guard shall have precedence of all other volunteers, and shall be first taken. [Amendment, approved Mar. 16, 1903; L. 1903, p. 323, § 15.]

§ 2025. Military Courts.

The military courts of this state shall be (1) courts of inquiry, (2) general courts-martial, (3) garrison courts-martial, (4) delinquency courts, which are of two kinds, (a) for officers, (b) for enlisted men.

Courts of inquiry to consist of from one to three officers of at least equal grade with the officers or with the senior officer if there be more than one, in regard to whom the court is ordered, may be ordered by the commander in chief for investigating the conduct of any officer, or for investigating any fact made the subject of military complaint. Such court of inquiry shall, without delay, report the evidence adduced, a statement of the facts and when required, an opinion thereon to the commander in chief. [Amendment, approved Mar. 16, 1901; L. 1901, p. 164.]

§ 2028. Courts for Enlisted Men.

The commanding officer of each regiment or battalion not a part of a regiment, may appoint a delinquency court, or delinquency courts, to consist of one commissioned officer of his command, for the trial of enlisted men of his command, and shall designate the organization or organizations over which such court shall have jurisdiction. The commanding officer of each brigade may, in like manner appoint a delinquency court, or delinquency courts, for the trial of enlisted men in such troops, batteries, separate companies and signal corps as are under his direct command, and shall designate the organizations over which each court shall have jurisdiction. The commander in chief may in like manner appoint a delinquency court, or delinquency courts for the trial of enlisted men of any organization or organizations not herein provided for. Any officer so detailed may be relieved from the duties of such court at any time, by the officer appointing him, or his successor in office, and another detailed as such court. Proceedings pending before such court shall not abate or be suspended by reason of such relief and new detail, and any officer so detailed shall have full power to do and perform all acts necessary to complete any proceeding pending before the court to which he was appointed, and to carry into effect any judgment, mandate, order or process made or issued by such court previous to such relief and new detail. A delinquency court shall be permanent and continuous. Its sessions shall be held at such time and in such places as may be most convenient for the prompt disposition of the business of the court, within the discretion of the officer constituting the same. The officer constituting said court may appoint and at any time remove a clerk thereof who shall receive a reasonable compensation while on duty, to be fixed by such officer with the approval of the officer appointing the court. It shall be the duty of the commanding officer of every regiment or battalion, every company attached to a regiment or battalion, and of every battery, troop, separate company, signal corps or hospital or ambulance corps to make return to the delinquency court appointed for or having jurisdiction over the enlisted men of his command, as herein provided, of all delinquents in his command, whereupon such delinquents must be forthwith summoned to appear before such delinquency court at the time and place designated in the summons. The proceedings and sen-

tence of such court, shall, from time to time, as may be convenient for the prompt disposition of its business, be delivered to the officer ordering the court or his successor in command who shall approve or disapprove the same within fifteen days thereafter, and shall notify the delinquent of his approval or disapproval thereof and from the sentence of any such court imposing a fine or penalty for any delinquency, the person tried may appeal within ten days after the notification of the fines or penalty to the officer ordering the court or his successor in command, who may remit or mitigate such penalty or fine. [Amendment, approved Mar. 16, 1901; L. 1901, p. 164.]

§ 2046. Offenses of Enlisted Men.

Enlisted men shall be tried by general courts-martial—

1st. For disobedience of orders.

2d. For disrespect to his superiors.

3d. For mutiny.

4th. For desertion.

5th. For drunkenness on duty.

6th. For conduct prejudicial to good order and military discipline.

7th. For any act contrary to the military code or to the provisions of the regulations for the government of the national guard or to the by-laws of the organization to which he belongs, except for nonpayment of dues and fines. On conviction, such enlisted man may be sentenced to be dishonorably discharged with loss of time served, reprimanded, and if a noncommissioned officer reduced to the ranks, dishonorably discharged or fined to an amount not exceeding \$50, or all or either of such fines and penalties. [Amendment, approved Mar. 16, 1901; L. 1901, p. 166.]

§ 2061. Prizes for Rifle Practice.

The commander in chief is authorized to use annually the sum of two hundred and fifty dollars to be given in prizes for the promotion and encouragement of rifle practice. Said sum shall be audited and paid as other military expenses and shall be [competed] for under such regulations as shall be prescribed by the commander in chief and general inspector of rifle practice.

An emergency exists and this act shall take effect immediately. [Amendment, approved Mar. 16, 1901; L. 1901, p. 166.]

§ 2068. Revenue.

For the purpose of raising revenue for the national guard, there is hereby levied, and the proper officers shall collect, a tax of one-tenth of one mill upon all the property of the state subject to taxation for the present fiscal year and each fiscal year hereafter.

An emergency exists and this act shall take effect immediately. [Amendment, approved Mar. 16, 1903; L. 1903, p. 324, § 18.]

§ 2070. **Armories.** *Amended to Chap. 55, Laws '07.*

Seattle Armory.

That for the purpose of assisting in the construction of an armory for the use of such organizations of the national guard of Washington as may be stationed there, the sum of \$30,000 is hereby appropriated from the military fund for the construction of an armory in the city of Seattle: Provided, That a suitable site for such armory be furnished without cost to the state of Washington therefor, and that such site and all buildings, improvements and structures thereon shall forever belong to the state of Washington.

Tacoma Armory.

That for the purpose of assisting in the construction of an armory for the use of such organizations of the national guard of Washington as may be stationed there, the sum of \$20,000 is hereby appropriated from the military fund for the construction of an armory in the city of Tacoma: Provided, That a suitable site for such armory be furnished without cost to the state of Washington therefor, and that such site and all buildings, improvements and structures thereon shall forever belong to the state of Washington.

Spokane Armory.

That for the purpose of assisting in the construction of an armory for the use of such organizations of the national guard of Washington as may be stationed there, the sum of \$20,000 is hereby appropriated from the military fund for the construction of an armory in the city of Spokane: Provided, That a suitable site for such armory be furnished without cost to the state of Washington therefor, and that such site and all buildings, improvements and structures thereon shall forever belong to the state of Washington.

Authority to Contract Debt for Construction of.

That the counties of King, Pierce and Spokane, each of them by and through its board of county commissioners, and the cities of Seattle, Tacoma and Spokane, each of them by and through its council, are hereby severally authorized and empowered to contract indebtedness for the purposes of purchasing such armory sites and assisting in the construction of such armories, and to issue negotiable bonds therefor whenever the board of county commissioners of the respective county, or the council of the respective city shall deem it advisable, to an amount which together with the existing indebtedness of such county or city, shall not exceed one and one-half per centum of the taxable property of such county or city, to be ascertained by the last assessment for county or city purposes.

Limitation of Debt for.

That each and every county and city mentioned in section 4 of this act may contract indebtedness for the purposes herein specified and issue bonds therefor in excess of the amount named in said section 4 of this act, but not exceeding in amount, together with the existing indebtedness five per centum of the taxable property, to be ascertained as provided in said section 4, whenever

three-fifths of the voters of such county or city voting on said question assent thereto at an election to be held for that purpose, consistent with the general election laws, which election may be either a general or special election.

Bonds—Denominations—Interest.

Said bonds shall be in denominations of not less than one hundred (100) nor more than one thousand (1000) dollars. They shall bear the date of issue, shall be made payable to the bearer in not more than twenty years from the date of issue, and bear interest at a rate not exceeding six (6) per cent per annum, payable annually, with coupons attached, for each interest payment. The bonds and each coupon in the case of a county shall be signed by the chairman of the board of county commissioners, and attested by the clerk of said board, and the seal of such board shall be affixed to each bond, but not to the coupon. In the case of a city, the bonds and each coupon shall be signed by the mayor and attested by the clerk under the seal of the city. Said bonds shall be printed, engraved or lithographed on good bond paper, and each bond shall state on its face that it is issued in accordance and in strict compliance with an act of the legislature of the state of Washington entitled "An act relating to the construction of armories for the use of the national guard of Washington, appropriating money from the military fund to assist therein, authorizing certain counties and cities of the first class to furnish sites and participate in such construction, empowering them to incur indebtedness and to issue bonds therefor, and imposing penalties and providing punishment for its violation," approved on the — day of — 19— (inserting the date of the approval of this act). Said bonds shall be payable in any city containing a bank of the United States.

Sale of Bonds.

Bonds issued by counties in accordance with this act shall be sold by the county commissioners at not less than their par value, and the proceeds shall be applied only for the purposes for which said bonds were issued. Bonds issued by cities in accordance with this act shall be sold in such manner as the corporate authorities shall deem for the best interest of the city. Treasuries of counties and cities issuing bonds in accordance with this act shall register the same in the manner provided by law for bonds issued for county and municipal purposes.

Sinking Fund.

Ten years before said bonds shall become due, there shall be levied by each county and city issuing the same, a tax sufficient to liquidate the said bonds at maturity. Such tax shall be collected and kept as a separate fund for the sole purpose of liquidating the said bonds in accordance with the next following section.

Payment of Bonds.

It shall be the duty of the treasurer of any county or city issuing bonds under the provisions of this act, whenever he has upon hand two thousand dollars of the special fund for the payment of said bonds, to advertise in the news-

paper doing the county or city business for the presentation to him for payment of as many of the bonds, issued under the provisions of this act, as he may be able to pay with the funds in his hands, to be paid in numerical order of said bonds, beginning with bond No. 1, until all of said bonds are paid: Provided, That thirty days after the first publication of said notice of the treasurer calling in any of said bonds by their numbers, said bonds shall cease to bear interest, which shall be stated in the notice.

Coupons Deemed Warrants.

The coupons hereinbefore mentioned for the payment of interest on said bonds shall be considered for all purposes as warrants drawn upon the special fund provided in section 8 of this act, and when presented to the treasurer of the county or city issuing such bonds, and no funds are in the treasury to pay said coupons, it shall be the duty of the treasurer to indorse said coupons as presented for payment, in the same manner as warrants are indorsed, and thereafter said coupons shall bear interest at the same rate as warrants so presented and unpaid.

Armory Commission.

That for the purpose of erecting and completing the armories provided for in this act, there are hereby created three boards, to be known as the Seattle armory commission, the Tacoma armory commission, and the Spokane armory commission, respectively, each of these boards shall consist of five members comprised as follows: The adjutant general, the chairman of the board of county commissioners of the respective county, the president of the council of the respective city, the city engineer, and the ranking officer of the active list of the national guard of Washington stationed at the respective city. The adjutant general shall be chairman of the three boards, and each shall elect a secretary from among its members. The members of these boards shall act as such until the completion of the armory under their charge and the acceptance thereof by the state, and shall give bond with at least two sureties to the state of Washington, in the sum of five thousand dollars, conditioned for the faithful performance of the duties imposed by this act, to be approved by the governor and filed with the secretary of state, said sureties qualifying in double the penal obligation of said bond. In each a majority shall constitute a quorum.

Not to be Interested in Contract.

It shall be unlawful for any of the members of the said boards to be connected, either directly or indirectly, in any manner whatsoever, with any contract or part thereof for the erection of said armories, or for any work connected therewith, or for the furnishing of any supplies or material therefor, or to receive any benefit therefrom, either by way of commission, rebate, bonus, division of profits or otherwise; and any one of said members who shall violate this provision of this act shall be guilty of a felony, and upon conviction thereof shall be subject to a fine not to exceed \$1,000, and imprisonment in the penitentiary not to exceed five years, and shall forfeit his right to and be removed from his place on the board by the court in which he shall have been convicted.

It shall be unlawful for any of said boards to employ any person in the supervision or superintendence of the building of said armories, or in any work connected therewith, who may or shall become in any manner connected, directly or indirectly, with any contract for the erection of said armories, or for the furnishing of any supplies or material therefor; and the said boards are hereby charged with the rigid enforcement of this provision of this act.

Sites for Armories.

It shall be the duty of each of said boards to locate its armory upon the most sightly and suitable site which shall become available therefor within its respective city; to secure the submission of plans and designs appropriate to an armory to cost not more than the amount specified in this act and such additional sum as may be donated by the county or city, to select the most desirable site, plan and design, and to obtain proper architectural designs, plans and specifications and details, in conformity with such plan and design; to secure the erection and completion of such armory building, conforming faithfully to such plan and design.

Contracts for Construction.

No construction or material exceeding \$500 in amount shall be furnished except pursuant to bids advertised for in one daily newspaper for a period of ten days in each of the cities of Seattle, Tacoma and Spokane. The bid of the lowest and best responsible bidder shall be accepted, saving that the boards shall have the right to reject any and all bids. The performance of every contract shall be secured by a surety company bond to the state of Washington, in a sum not less than one-quarter of the contract price, said bond to be conditioned for the faithful performance of said contract and to be approved by the respective commissions. Each bid shall be accompanied by a certified check in the sum of \$1,000, payable to the chairman of the respective commission, which shall be forfeited to the state for the use of the military fund upon failure of the party, for a period of ten days after any contract is awarded him to enter into a proper contract and furnish satisfactory bonds as required by law. All contracts shall reserve the right of the board for good cause shown to annul the contract, without allowance for damages, and allowing only expenses incurred and labor performed, not exceeding the contract price of the proportion that the work done or material furnished thereunder bears to the total amount contracted for. Such a per centum not less than twenty per centum, as the board shall deem proper, shall be reserved from payment on monthly estimates of work done, until such work shall have been completed, inspected and accepted. All material contracted for shall be of the best quality and to the satisfaction of the board, and the directions, plans and specifications of the work executed and carried out by skilled and reputable architects, contractors, artists, mechanics and laborers, likewise to the satisfaction of the board.

Architect—Compensation.

The architect chosen by each of these boards shall receive such compensation for his plan and design as the board shall deem reasonable. He shall be

supervising architect of said building, and for all contracts for construction or material therefor. He shall see that all material furnished and work done shall be of the best quality, and all contracts with said board are faithfully performed by the parties so contracting with said board. He shall perform all other duties devolving upon him as such architect, and the supervising architect of said building, and may be removed at the pleasure of said board. Neither said architect nor any of his subordinates or assistants shall be in any way connected with any work done or material furnished for said building, or any contract therefor, or shall have any interest therein, directly or indirectly. He shall furnish a surety company bond to the state of Washington in the sum of \$10,000, conditioned for the faithful performance by said architect, his assistants and subordinates, of his or their duties as herein prescribed.

Disbursements, how Made.

All disbursements on account of the construction of any of the armories provided for in this act shall be made pursuant to certificates issued by the board having charge. All claims, bills and demands for labor performed, work done or material furnished shall be presented to the board in duplicate, and shall be passed upon by said board after a careful examination of every item named. If found correct they shall audit the same, preserving one duplicate and transmitting the other as audited and allowed to the state auditor, and shall issue a certificate to the effect that the services have been rendered or material furnished, and the person therein named is entitled to a warrant on the treasury for the amount therein named. Upon a presentation of said certificate and a duplicate of the vouchers therefor as audited and approved by the board as herein provided, to the state auditor, he shall draw his warrant on the state treasury upon the fund appropriated for the particular armory in the construction of which the claim was incurred, for the amount stated, and to the order of the person named in said certificate: Provided, That no certificate shall be issued in excess of the amount remaining to the credit of that particular fund. All certificates issued shall be recorded in a book for that purpose.

Funds—Creation and Designation of.

In order to carry out the provisions of this act there are hereby created three funds, to be known as the Seattle armory fund, the Tacoma armory fund, and the Spokane armory fund, respectively, under which names the amounts appropriated in sections 1, 2 and 3 of this act shall be carried respectively. Whenever any county, city or individual shall donate money to assist in the construction of any of these armories, the same shall be paid into the state treasury to the credit of the particular fund for the armory in question, and shall be available in like manner as the money appropriated by the state, for the expenses incurred in the construction of that particular armory.

Attorney General, Counsel for Board.

The attorney general shall be the legal adviser of the boards herein constituted.

That the armories herein provided for the national guard of Washington shall not be used for any purpose whatever other than the legitimate uses of the commands occupying them, and no commander of any regiment, battalion or company shall allow the armory or armories of his command to be let for other than a proper military purpose, unless by the approval of the commander in chief or intermediate commanders.

Commander to Establish Rules for.

The commander in chief is hereby authorized to make such rules and regulations as he may deem expedient to govern these armories, but such rules and regulations shall conform to this act. When promulgated they shall have the same force and effect as this act. [Approved Mar. 16, 1903; L. 1903, p. 209.]

Public Lands, Laws '05, pg. 52.
§ 2085. Public Lands—Accepting Grants.

That the state of Washington hereby accepts the condition of section four (4) of an act of Congress, entitled: "An act making appropriations for sundry civil expenses of the government for the fiscal year ending June 30th, 1895, and for other purposes," approved August 18th, A. D. 1894, and all acts subsequent and relating thereto together with all the grants of land to the state under the provisions of the aforesaid acts.

Disposal of.

The selection, management and disposal of said lands shall be vested in the commissioner of public lands of the state of Washington. He shall receive and file all proposals for the construction of irrigation works to reclaim lands selected under the provisions of this act; prepare and keep for public inspection, maps or plats, on a scale of two inches to the mile, of all lands selected, receive entries of settlers on these lands, and hear or receive the final proof of their reclamation; and do any and all work required to be done in carrying out the provisions of this act.

Requests for Selection of Lands, and Proposals to Construct Ditches.

Any person, company or association of persons, or incorporated company, constructing, having constructed or desiring to construct ditches, canals or other navigation works, to reclaim land under the provisions of said act, shall file with the commissioner of public lands a request for the selection on behalf of the state by the commissioner of public lands of the land to be reclaimed, designating said land by legal subdivision. This request shall be accompanied by a proposal to construct the ditch, canal or other irrigation works necessary for the complete reclamation of the lands to be selected. The proposal shall be prepared in accordance with the rules of the commissioner of public lands and with the regulations of the department of the interior. It shall state the source of water supply, the location and dimensions of the proposed works, the price and terms per acre at which perpetual water rights will be sold to settlers on the land to be reclaimed. In the case of incorporated companies it shall state the name of the company, the purpose of its incorporation, the names and places of residence of its trustees and officers, the amount of its authorized and of its paid-up capital. If the applicant is not an incorporated company

the proposal shall set forth the name or names of the party or parties, and such other facts as will enable the commissioner of public lands to determine his or their financial ability to carry out the proposed undertaking.

A certified check for a sum not less than two hundred and fifty dollars (\$250) nor more than two thousand five hundred dollars (\$2,500) as may be determined by the rules of the commissioner of public lands shall accompany each such request and proposal, the same to be held as a guaranty of the execution of the contract with the state, in accordance with its terms, by the party submitting such proposal, in case of the approval of the same and the selection of the land by the commissioner of public lands, and to be forfeited to the state in case of the failure of said party to enter into a contract with the state in accordance with the provisions of this act.

Duty of Commissioner.

Immediately upon the receipt of any request and proposal as designated in section 3, it shall be the duty of the commissioner of public lands to examine the same and ascertain if it complies in form with the rules of his office and the regulations of the department of the interior. If it does not it is to be returned for correction, and, if not corrected within sixty days, it may be rejected by the commissioner. The commissioner of public lands shall determine whether or not the proposed works are feasible and the water appropriated and provided for is adequate and whether the maps filed in his office comply with the requirements of his office and the regulations of the department of the interior; also whether the lands proposed to be irrigated are desert in character, and such as may be properly set apart under the provisions of the aforesaid acts of Congress and the rules and regulations of the department of the interior thereunder. When a request or proposal as to substance is not approved by the commissioner he shall notify the party making such request or proposal of his disapproval thereof and the reason therefor, and the party so notified shall have sixty days in which to make a satisfactory proposal but the commissioner may, at his discretion, extend the time to six months.

On receipt of the request and proposal, and the approval of the same by the commissioner of public lands, he shall file in the local United States land office a list in triplicate, describing the land embraced in said proposal with a request for the withdrawal of the land described in said list.

Upon the withdrawal of the land by the department of the interior, it shall be the duty of the commissioner of public lands to enter into a contract with the party submitting the proposal, which contract shall contain complete specifications of the location, dimensions and character of the proposed ditch, canal and other irrigation works; the price and terms per acre at which perpetual water rights shall be sold to the settler; the amount of water to be supplied; the price of an annual maintenance fee per acre, and the price and terms upon which the state is to dispose of the land to settlers: Provided, That such price and terms for irrigation works, water rights, maintenance fee and for lands to be disposed of by the state to settlers, shall in all cases be reasonable and just. This contract shall not be entered into on the part of the state until

withdrawal of these lands by the department of the interior and the filing of a satisfactory bond on the part of the proposed contractor for irrigation works, which bond shall be in a penal sum equal to five per cent of the estimated cost of the works, and to be conditioned for the faithful performance of the provisions of the contract with the state: Provided, That no contract under the provisions of this act shall be entered into by the commissioner of public lands until the same shall have been approved by the attorney general and the governor.

Contracts for Irrigation Works.

No contract shall be made by the commissioner of public lands which requires a greater time than ten (10) years for the construction of the works and such additional time as may be granted by the interior department as provided by the aforesaid acts of Congress and amendments thereto, and all contracts shall state that the work shall begin within six months from the date of the contract; at least one-tenth of the construction work shall be completed within two years from the date of said contract; and the construction of said works shall be prosecuted with reasonable diligence to completion.

Forfeiture of Contracts for.

Upon the failure of any party having a contract with the state for the construction of irrigation works, to begin the same within the time specified by the contract, or to complete the same within the time or in accordance with the specifications of the contract with the state, it shall be the duty of the commissioner of public lands to give such party written notice of such failure and if, after a period of sixty days from the giving of such notice such party shall have failed to proceed with the work or to conform to the specifications of his contract with the state the bond and contract of such party and all work constructed under such contract shall be at once and thereby forfeited to the state, and it shall be the duty of the commissioner of public lands at once so to declare and to give notice once each week for a period of four weeks in some newspaper of general circulation in the county in which the work is situated, and in one newspaper at the state capital in like manner and for a like period, that upon a day fixed, proposals will be received at the office of the commissioner of public lands at Olympia, Washington, for the purchase of the incomplete works and for the completion of said contract, the time for receiving said bids to be at least sixty days subsequent to the issuing of the last notice of forfeiture. The money received from the sale of partially completed works, under the provisions of this section shall first be applied to the expenses incurred by the state in their forfeiture and disposal, to satisfy the bond, and the surplus, if any exists, shall be paid to the original contractor with the state. Whenever after the completion of said irrigation works any contractor or his successors or assigns shall fail to furnish an adequate amount of water to irrigate the lands of water right owners or there shall exist other cause as provided by law for the appointment of a receiver, the attorney general may apply for the appointment of a receiver to take possession of the irrigation works and canal and other property of such party, and manage, operate, sell or dispose of the same. Such application shall be made to the superior court of the county in

which the whole or some portion of the irrigation works or canal of such party is situated; and the court or its receiver by order of the court shall have and may exercise such powers as to the possession, management, operation, sale or disposition of the property and works of such party as is provided by law relating to receivers: Provided, That nothing herein contained shall be taken or construed as limiting the right of any party to have a receiver appointed as is in other cases provided by law.

Nothing in this act shall be construed as authorizing the commissioner of public lands to obligate the state to pay for any work constructed under any contract or to hold the state in any way responsible to settlers for the failure of contractors to complete the work according to the terms of their contracts with the state.

Notice of Opening for Settlement and Conditions of.

Immediately upon the withdrawal of any land for the state by the department of the interior and the inauguration of work by the contractor, it shall be the duty of the commissioner of public lands, by publication once a week in one newspaper of the county or counties in which said land is situated, and such further notice as he may deem necessary, for a period of four weeks, that said land is open for settlement; the price for which said land will be sold to settlers by the state, the contract price at which settlers can purchase a perpetual water right, and the cost of an annual maintenance fee.

Applications for Settlement.

Any citizen of the United States, or any person having declared his intention to become a citizen of the United States (excepting married women not the heads of families) over the age of twenty-one years, may make application under oath, to the commissioner of public lands, to enter any of said lands in any amount not to exceed one hundred and sixty acres for any one person; such application shall set forth that the person desiring to make such entry does so for the purpose of actual reclamation, cultivation and settlement in accordance with the act of Congress and the laws of this state relating thereto, and the applicant has never received the benefit of the provisions of this act, to an amount greater than one hundred and sixty acres, including the number of acres specified in the application under consideration. Such application must be accompanied by a certified copy of a contract for a perpetual water right, made and entered into by the party making application with the person, company or association of persons, or incorporated company who have been authorized by the commissioner of public lands to furnish water for the reclamation of said land; and if said applicant has at any previous time entered land under the provisions of this act, he shall so state in his application, together with the description, date of entry and location of said lands. The commissioner of public lands shall thereupon file in his office the application and papers relating thereto, and, if allowed, issue a certificate of location to the applicant. All applications for entry shall be accompanied by a payment of one dollar per acre, which shall be paid as a partial payment on the land if the application is allowed, and all certificates when issued shall be recorded in a book to be kept

for that purpose. If the application is not allowed, or the contractor fails to complete the work according to contract the one dollar per acre accompanying the application shall be returned to the applicant. The commissioner of public lands shall dispose of all lands accepted by the state under the provisions of this act at a uniform price of not less than ten dollars per acre, one-tenth to be paid at the time of entry and the remainder in nine equal annual installments, with interest at six per cent per annum payable annually, provided a settler may make payment in full at any time upon or after making final proof.

Funds Arising from Sale of.

All moneys received by the commissioner of public lands from the sale of lands selected under the provisions of this act shall be deposited with the state treasurer and shall constitute a trust fund in the hands of said treasurer to be used in the reclamation of other arid lands.

Duties of Contractors and Settlers.

Within one year after any person, company or association of persons or incorporated company authorized to construct irrigation works under the provisions of this act, shall have notified the settlers under such works that they are prepared to furnish water under the terms of their contract with the state, each settler shall enter into a contract with the state for the purchase of the land described in his certificate of location, complete the first annual payment thereon, and shall cultivate and reclaim not less than one-sixteenth part of the land filed upon by him, and within two years after the said notice, the settler shall have actually irrigated and cultivated not less than one-eighth of the land filed upon, and within ten years from the date of said notice the settler shall appear before the commissioner of public lands or the clerk of the superior court, within the county wherein said land is situated and make final proof of reclamation, settlement and occupation, which proof shall embrace evidence that he has a perpetual water right for his entire tract of land sufficient in volume for the complete irrigation and reclamation thereof; that he is an actual settler thereon and has cultivated and irrigated not less than one-eighth of said tract, and such further proof, if any, as may be required by the regulations of the department of the interior, and the commissioner of public lands. The officer taking this proof shall be entitled to receive a fee of two dollars (\$2.00), which fee shall be paid by the settler and shall be in addition to the price paid for the land. All proofs so received shall be submitted to the commissioner of public lands and shall be accompanied by the last and final payment for said land, and approved by the commissioner of public lands, and such proceedings had that a patent of said land shall be issued: Provided, That when the commissioner of public lands shall take such final proof all fees received by him shall be turned in to the state treasurer.

Patents for, When Issued.

After the issuance of a patent to any land by the United States to the state, notice thereof shall be forwarded to the party, if any entitled to said land, and, upon full payment having been made, it shall be the duty of the commissioner

of public lands to certify such fact to the governor, whereupon he shall cause a patent to be issued to the purchaser, the patent to be signed by the governor and attested by the secretary of state with the seal of the state thereto attached, and shall be recorded in the office of the commissioner of public lands, and no fee shall be required other than the fee provided for in this act.

Water Rights.

The water right to all land acquired under the provisions of this act shall attach to and become appurtenant to the land as soon as title passes from the United States to the state. Any person, company or association of persons, or incorporated company furnishing water for any tract of land shall have a prior lien on said water right and land upon which said water is used for all deferred payments for said water right and for any maintenance fee due, said lien to be in all respects prior to any other lien or liens created or attempted to be created by the owner or possessor of said land; said lien to remain in full force and effect until the last deferred payment for the water right is fully paid and satisfied according to the terms of the contract under which said water right was acquired and until all delinquent maintenance fees are fully paid. The contract for the water right upon which the aforesaid lien is founded shall be recorded in the office of the county auditor of the county where the land is situated. Upon default of any of the deferred payments secured by any lien under the provisions of this act and any maintenance fee, the person, company, or association of persons, or incorporated company holding or owning said lien, may foreclose the same according to the conditions and terms of the contract granting and selling to the settler the water right and providing for a maintenance fee. All sales shall be advertised in a newspaper of general circulation, published in the county where said land and water right is situated, once a week, for four consecutive weeks, and shall be sold to the highest bidder at the front door of the courthouse of the county, or such place as may be agreed upon by the terms of the contract. And the sheriff of said county shall in all such cases give notice of sale and shall sell such land and water right and shall make and deliver a certificate of sale to the purchaser, and at such sale no person, company, or association of persons, or incorporated company, owning or holding any lien shall bid in or purchase any land or water right at a greater price than the amount due on deferred payment or payments for said water right and land and maintenance fee due and the costs incurred in making the sale of the land and water right. At any time within nine months after the foreclosure sale by the sheriff of the land and water right as aforesaid, the original owner against whom the lien has been foreclosed, or any other party entitled to redeem land sold under execution may redeem land and water right so sold in the same manner and order and under the same procedure as is or may be provided by law for the redemption of land sold under execution. The party reclaiming said land and water right shall pay to the sheriff the amount for which said land and water right was sold and costs and increased costs, together with interest thereon at the legal rate, and all taxes and payments maturing subsequent to such foreclosure as well as all maintenance fees due at the time

of redemption with interest at like rate. If there be more than one redemption each successive redemption shall be made within six (6) weeks after the last preceding redemption. And where the lien holder becomes the purchaser at such foreclosure sale, and in no other case, if such land and water right be not redeemed by the original owner or other person entitled to redeem as above provided within nine (9) months then at any time within three (3) months after the expiration of such nine (9) months any person desiring to settle upon and use such land and water right may redeem the said land and water right in the manner hereinbefore provided for redemption by the owner or other redemptioners. Where such land and water right are not purchased by the lienholder at such foreclosure sale the sheriff shall pay out the proceeds of such sale as follows:

First. He shall retain all charges, costs and fees for his services and account for the same as in civil cases.

Second. To the lienholder or his assigns the amount of the lien together with all interest, costs and fixed charges thereon.

Third. The balance of any remaining, to the person against whom such lien was foreclosed or his assigns. When the period of redemption shall have expired the sheriff or his successor in office shall execute a proper conveyance of the land and water right sold, to the party entitled thereto. The foreclosure herein provided for may be transferred to the superior court of the proper county in the same manner and with like effect as foreclosure of chattel mortgages on notice may be transferred.

Records Required.

The maps in the office of the commissioner of public lands, of the land selected under the provisions of his act, shall show the location of the canals or other irrigation works approved in the contract with the commissioner of public lands, and all land filed upon shall be subject to the right of way of such canals, distribution system and irrigation works. Such right of way to embrace the entire width of the canal, distribution and irrigation works and such additional width as may be required for their proper operation and maintenance.

Rules for Proposals and Entries.

The commissioner of public lands shall provide suitable rules for the filing of proposals for constructing irrigation works, and for the forfeiture of entry by settlers, upon failure to comply with the provisions of this act. There shall be kept in the office of the commissioner of public lands for public inspection, copies of all maps, plats, contracts for the construction of irrigation works, and of the entries of the land by settlers. He shall require from each person, company or association of persons, or incorporated company engaged in the construction of irrigation works under the provisions of this act, an annual report, to be submitted to him on or before November 1st of each year. This report shall show the number of water rights sold, the number of users of water under said irrigation works, the legal subdivisions of land for which water is to be furnished, the names of the officers of the company, the acreage of land which the said irrigation works are prepared to supply with water, and

such other data as the commissioner of public lands may see fit to require. The rules required by this section may be waived in the case of irrigation works being constructed by any person, colony or association of persons to furnish water for land settled upon and being reclaimed by themselves.

Fees.

The commissioner of public lands shall collect the following fees: For filing each application one (1) dollar; for filing each final proof one (1) dollar; for issuing each patent two (2) dollars; for making certified copies of papers or records, the same fee as provided for to be charged by the secretary of state for like services. All moneys collected and fees received under this act shall be paid by the commissioner of public lands to the state treasurer and credited by him to the trust fund created by said act of Congress.

Annual Reports.

The commissioner of public lands shall issue on or before November 30th of each year a report setting forth in detail the names, location and character of the irrigation works in process of construction, the acreage and legal subdivision of land intended to be reclaimed, and the terms of payment for both water rights and land. Not less than one thousand copies of such report shall be printed for gratuitous distribution.

Water Rights Extended to Other State Lands.

Any contract for the reclamation of arid land under this act shall provide that a water right be extended to all state, school and granted lands owned by the state of Washington, under the canal and irrigation works to be constructed under such contract at the same rates and upon the same terms and conditions as apply to the lands granted under said act of Congress.

Disposition of Fund.

The state of Washington shall, out of the money arising from its disposal of any lands selected under this act, first reimburse itself for any and all costs and expenditures incurred, and heretofore incurred, by it in selecting, irrigating and reclaiming said land.

Suits and Actions, How Begun.

All suits or actions brought by the commissioner of public lands, under the provisions of this act, shall be instituted by him in the name of the state of Washington.

Repeal.

That section 2 of an act entitled "An act accepting the terms of the act of Congress, approved August 18th, 1894, providing for the reclamation, settlement and disposition of the one million acres of said land granted therein, making appropriation therefor and declaring an emergency, approved March 22d, 1895," creating the office of commissioner of arid lands, be and the same is hereby repealed.

An emergency exists and this act shall take effect immediately. [Approved Mar. 16, 1903; L. 1903, p. 299.]

§ 2086. Arid lands, commissioner of—Office of not abolished.—The office of commissioner of arid lands provided for in the act of March 22, 1895 (Laws 1895, p. 452), is not abolished or abrogated by the act of March 16, 1897 (Laws 1897, p. 263, § 70), which contains a clause purporting to repeal said act of 1895, nor by the act of March 19, 1897 (Laws 1897, p. 345), which, in amending said act of 1895, while attempting to impose the duties of arid land commissioner upon an officer to be known

as the commissioner of irrigation does not in fact abrogate the office of arid land commissioner, as the section providing for the appointment, qualification and compensation of the latter is left undisturbed and no provision for the appointment of a commissioner of irrigation is made, thus manifesting the legislative intent to regard the terms as synonymous and made in reference to the same officer: *Howlett v. Cheetham*, 17 Wash. 626, 50 Pac. 522.

§ 2110. Ceding Jurisdiction to United States.

Exclusive jurisdiction shall be, and the same is hereby ceded to the United States over and within all the territory that is now or may hereafter be included in that tract of land in the state of Washington, set aside for the purposes of a national park, and known as the Rainier National Park; saving, however, to the said state, the right to serve civil or criminal process within the limits of the aforesaid park, in suits or prosecutions for or on account of rights acquired, obligations incurred or crimes committed in said state, but outside of said park; and saving further to the said state the right to tax persons and corporations, their franchises and property on the lands included in said park: Provided, however, This jurisdiction shall not vest until the United States through the proper officer, notifies the governor of this state that they assume police or military jurisdiction over said park. [Approved Mar. 16, 1901; L. 1901, p. 192.]

§ 2140a. Duties of Land Commissioner to Report on Lands Belonging to Agricultural College.

It shall be the duty of the state land commissioner to make a report to the board of regents of the agricultural college and school of science on or before the first Monday in April, 1899, and on or before the first Monday in April of each succeeding year, which said report shall contain a complete detailed statement:

1. Of all lands which have been selected under an act of Congress approved July 2, 1862, entitled "An act donating public lands to the several states and territories which may provide colleges for the benefit of agriculture and the mechanic arts," and all acts supplementary thereto, and under the act of Congress of February 22, 1889, entitled "An act to provide for the division of Dakota into two states and to enable the people of North Dakota, South Dakota, Montana and Washington to form constitutions and state governments and to be admitted into the union on an equal footing with the original states, and to make donations of public lands to institutions," which said selections have been approved by the secretary of the interior, for the use and support of agricultural colleges and for a scientific school, which statement shall set forth the lands set apart for the agricultural college and for the school of science in district and separate lists: Provided, That the land commissioner shall not be required to include in such annual report a statement of approved selections and locations made in any previous annual report: And provided further, That when the entire amount of the one hundred and ninety thousand acres of land set apart for the use and

support of the agricultural college and school of science shall have been selected, located, and approved by the secretary of the interior, and included in any annual report or reports to the said board of regents, that thereafter the land commissioner shall not be required to make such annual report.

2. Of all lands belonging to the agricultural college and likewise to the school of science sold prior to said first Monday in April, 1899, and on or before the first Monday in April of each succeeding year, which statement shall accurately describe the lands sold, the price received for the same and all moneys received from the sale of [or] lease of said lands or from the sale of timber, stone or hay from said lands: Provided, That the land commissioner shall not be required to include in such annual report a statement of lands sold or moneys received which shall have been included in any previous annual report.

3. Of the investment of all moneys received from the sale or lease of agricultural college land, or from the sale of timber, stone or hay from said lands, which report shall describe fully the stocks, bonds or other securities in which said moneys shall have been invested, specifying the issuer or issuers, the rate of interest, the time to run, and the face or par value of said stocks, bonds or other securities, and a like report of the disposition of all moneys received from the sale or lease of lands set apart for the scientific school and from the sale of timber, stone or hay from said lands: Provided, That the land commissioner shall not be required to include in any annual report a statement of the disposition of any moneys included in any previous annual report.

State Treasurer to Report.

It shall be the duty of the state treasurer to make a report to the board of regents of the agricultural college and school of science on or before the first Monday of April, 1899, and on or before the first Monday of April of each succeeding year, which said report shall contain a complete detailed statement:

1. Of all stocks, bonds or other securities belonging to the agricultural college and school of science which may have been deposited with said treasurer by the land commissioner during the year next preceding said report, together with all other securities belonging to said college which may be in his custody, setting forth in separate statements those which have been derived from the sale or lease of agricultural college lands and those which have been derived from the sale or lease of the scientific school lands.

2. Of all interest received during the year next preceding said report, on all stocks, bonds or other securities belonging to the agricultural college and school of science which may be or may have been in the custody of said treasurer, and of all premiums which may have been received on securities sold or redeemed during the aforesaid period.

3. Of all stocks, bonds or other securities belonging to the agricultural college and school of science which may have been paid, redeemed or sold during the year next preceding such report, together with the principal sum or sums remaining in the hands of said treasurer uninvested.

Duties of College Regents.

To the end that the endowment of the agricultural college and school of science may be conserved and increased it shall be the duty of the board of

regents of the said college and school of science at as early a date as practicable to inspect or cause to be inspected the lands set apart for the use and support of the agricultural college and school of science, and to gather or cause to be gathered such information relative to the character, condition and true value of said lands as may be conducive to a wise and advantageous disposition of the same, and to collect and distribute such information as shall facilitate the sale or lease of such lands, as provided by law, and to furnish such information to the land commissioner when called for: Provided, That the expense of collecting and distributing such information shall be paid from the maintenance fund of the college, which said expenses shall not exceed one thousand dollars in any one fiscal year and shall not exceed three thousand dollars in the aggregate: Provided further, That a complete report of the doings of the board of regents in the collecting and distributing of information and facilitating the sale or lease of said lands, together with the expenses incurred therein shall be included in the annual report of the board of regents to the governor and legislature.

An emergency exists and this act shall take effect immediately. [Approved Feb. 11, 1899; L. 1899, p. 12.]

§ 2141. Appraisement and Sale of.

That any person or company may make written application to the board of appraisers for the appraisement and sale of any lands belonging to the state, and said board shall cause to be prepared blank applications containing such instructions as will inform and aid intending purchasers in making application for the appraisement and sale of any lands. Each application must be accompanied with certificate of deposit or certified check upon any bank of this state, made payable to the state treasurer and equal in amount to ten cents per acre for the land described in such application: Provided, That such deposit may be made in cash or by postoffice money order, but in no case shall such deposit be less than ten dollars. In case the lands described in such application are sold at the time they are offered for sale, in accordance with such application, the amount of such deposit shall be returned to such applicant. If such lands be not sold, through fault of said applicant at such sale, such deposit shall be forfeited to the state, and shall be so declared by the said board, and the state treasurer shall thereupon place said forfeited money to the credit of the general fund of the state. That when, in the judgment of the board of appraisers or the commissioner of public lands, a sufficient number of applications have been received for the appraisement and sale of any lands belonging to the state, said commissioner of public lands shall cause any of such lands so applied for to be personally inspected and appraised as to its character, topography, agriculture, timber, coal, mineral, stone or rock quarries, or grazing, its distance from any city, town, railroad, river, irrigation ditch or other waterways, when irrigation is required, and fully report the same to said board or commissioner of public lands, together with the commissioner's or appraiser's judgment as to its present prospective value, which said report shall be considered and thereupon a price per acre fixed for each quarter section and subdivision thereof, or lot or block,

which shall not be less than ten dollars per acre for lands granted for educational purposes: Provided, That no more than one hundred and sixty acres (160) of any school or granted lands of the state shall be offered for sale in one parcel, and all lands within the limits of any incorporated city or town or within two miles of the boundary of such incorporated city or town, where the valuation of such lands shall be found by appraisement to exceed one hundred (\$100.00) dollars per acre, shall, before the same be sold, be platted into lots and blocks of not more than five acres in a block and not more than one block shall be offered for sale in one parcel, and said board is hereby authorized to plat such lands into lots and blocks, and all plats shall be filed in the office of the commissioner of public lands: Provided further, That whenever application is made to purchase less than a section, the said commissioner of public lands may order the inspection of an entire section or sections: Provided further, That all school and granted lands for educational purposes may thereafter be sold at not less than the appraised value, when the purchase price realized for the timber thereon added to the appraised value of the land is \$10.00 per acre or in excess thereof. [Amendment, approved Mar. 12, 1903; L. 1903, p. 103.]

§ 2142. Appraisement of Improvements—Timber—Stone.

That when applications are made for the purchase of timber, stone, fallen timber, hay or gravel, or other valuable materials situated upon public lands of the state, the same inspection shall be had as for applications to purchase lands: Provided, That no standing timber or stone shall be sold for less than the appraised value thereof, and such timber, stone, hay and gravel may be sold separate from the land, when, in the judgment of the board, it is for the best interest of the state to sell same, except when the estimated amount of timber shall exceed one million feet to the quarter section, in which case the timber shall be sold separate from the land: And provided further, That the full purchase price of such valuable materials shall be paid in cash when sold separate from the lands: Provided, That in all cases when the timber is sold separate from the land, said timber shall revert to the state if it has not been removed from the land within three years from the date of purchase thereof, except that in all cases when the purchasers are acting in good faith and removing the said timber, the land commissioner may extend the time of removal for a period not to exceed two years. That in every appraisement of land granted to this state the board of appraisers shall be and serve as the board of appraisers mentioned in section two of article sixteen of the state constitution. And in every appraisement under this chapter the said board shall separately appraise all improvements placed upon any land of the state and found on such land at the time of the appraisement; and shall also appraise all damages and waste done to said land by the cutting and removal of timber or the removal of stone or other materials by the person or persons claiming such improvements, or by his consent, and the damage to the land or materials thereon by reason of the use and occupancy of said land shall be considered in the appraisement, and the balance, after deducting such damages and waste appraised as aforesaid, shall be determined as the value of the improvements upon the land so appraised and

every such appraisalment shall be recorded in the proceedings of the board of appraisers: Provided, That this section shall not be considered to affect the right of the state to the value of such land: Provided further, That if the purchaser of such land from the state be not the owner of the improvements he shall deposit with the state treasurer, through the board of appraisers, within thirty days after the sale, the appraised value of such improvements; and if it be found by the said board that the owner of said improvements was not holding adversely to the state or improving said land, or that said improvements were placed on said land in good faith by a lessee from the state or territory, or that said lessee had in all respects complied with the terms of his lease and his leasehold interest, not forfeit or subject to a forfeiture then the board of appraisers shall direct the state treasurer to pay, and he shall pay to the owner of said improvements such sum so deposited; but if it be found by the said board of appraisers that the said improvements owned or made on said land by parties holding or claiming the land, adversely to the state, or by persons without license or lease from the state, or by a lessee who had not complied with the terms of his lease, then said board shall direct the state treasurer to pay over such sum so deposited into the permanent school fund. In case the purchaser shall not deposit the appraised value of the improvements in the manner described above, the sale may be disapproved by the board of appraisers: Provided further, That if the said improvements were made by a lessee or other person with intent to defraud the state or the intending purchaser the sum so deposited shall be returned in the manner described above, to the state: Provided further. That in determining the value and nature of such improvements the board is hereby authorized to compel by subpoena the attendance, swear and examine witnesses as to the cost and value of such improvements and the damage and waste as well. [Amended by act of Mar. 14, 1899; L. 1899, p. 252, § 1; amendment. approved Mar. 13, 1901; L. 1901, p. 308.]

§ 2142a. Appeal from Order of Land Commissioners – Who May Appeal.

Any person who is an applicant to purchase or lease any of the state's granted, tide, shore, arid or oyster lands or harbor areas, or to purchase any timber, stone, fallen timber, hay, gravel or other valuable materials situate on any of the public lands of the state, and any person whose property rights or interests will be affected by such sale or lease, who may deem himself aggrieved by any order or decision of the board of state land commissioners concerning the same, shall have the right to appeal from such order or decision to the superior court of the state of Washington for the county in which such lands, harbor areas or materials are situate. Said board of state land commissioners shall forthwith give notice in writing to all parties who have appeared in such proceeding of its order or decision.

How Taken.

Such appeal shall be taken by the person desiring to appeal serving upon the adverse party, if any there be, and also upon all other parties who have appeared in the proceeding before said board, or upon their attorneys, a notice in writing

that he appeals from such order or decision to the said superior court, which said notice of appeal must be served as aforesaid, and, together with the proof or admission of service indorsed thereon or attached thereto, must be filed with the said board within thirty days from and after the day such order or decision is made.

Bond for.

At the time of filing such notice of appeal or within five days thereafter, the appellant shall also file with said board a bond to the state of Washington in the penal sum of two hundred dollars, executed by said appellant and one or more sureties, who, unless a surety company bond be given, shall justify according to law; which bond shall be conditioned that the appellant shall pay all costs that may be awarded against him on the appeal or on the dismissal thereof, and shall be approved by one of the members or by the secretary of said board.

Transcript.

Within thirty days after said notice of appeal has been filed, said board shall require its secretary to make a transcript of all the entries in the records of said board relating to the case, and, under the seal of said board, to certify the same together with all the processes, original pleadings and other papers relating to the case and filed with said board, except the evidence used in such proceeding before said board; and shall require its secretary to file said certified transcript and papers, at the expense of the appellant, with the clerk of the superior court of the county to which said appeal has been taken.

Hearing.

The hearing and trial of said appeal in said superior court shall take place de novo before the court without a jury, upon the pleadings and papers so certified. The court or judge may order the pleadings to be amended, or new and further pleadings to be filed. Costs on said appeal shall be awarded to the prevailing party as is now provided by law in cases of actions commenced in the superior court, but no costs shall be awarded against said board or the state. Should judgment be rendered against the appellant, the costs on appeal shall be taxed against him and the sureties on the appeal bond, except when the state is the only adverse party, and shall be included in said judgment, and execution may issue from said superior court for the collection thereof.

Appeal to Supreme Court.

Any party feeling himself aggrieved by the judgment of said court, may appeal therefrom to the supreme court of the state of Washington in the same manner and within the time provided by law for appealing from judgments on actions at law to such supreme court.

Judgment.

Unless appeal be taken from the judgment of said superior court, the clerk of said court shall, on demand, certify, under his hand and seal of such court, a true copy of such judgment to the board of state land commissioners, which

judgment shall thereupon have the same force and effect as if rendered by said board.

Rules of Construction.

This act shall apply to all pending applications or proceedings thereunder for the sale or lease of lands, harbor areas, timber or other materials enumerated in this act, upon which sales or leases have not been finally executed and delivered, provided appeals in such pending proceedings be prosecuted within twenty days after this act shall take effect: Provided, This act shall not be construed as applying to cases of appeals already commenced and now pending so as to deprive any party of any rights or privileges under any law of this state to which he is now entitled in the prosecution of such pending appeal to a final decision.

Repeal.

Except as to cases of pending appeals, as mentioned in section eight of this act, all acts and parts of acts in conflict herewith are hereby repealed. Nothing in this act contained shall repeal or otherwise affect the provisions of an act approved March 13, 1899, entitled "An act limiting the time in which appeals from the board of land commissioners to the superior court shall be prosecuted." [Approved Mar. 8, 1901; L. 1901, p. 98.]

§ 2143. Certificate of Appraisalment—Notice of.

That immediately upon the appraisalment and inspection provided for in this act being made of any land in any county of the state, and the commissioner of the public lands shall prepare a certificate of such appraisalment showing in detail the facts reported in such appraisalment, and he shall file one copy of the same in his office and shall certify one copy and forward it to the auditor of the county in which said land is situated, and the said county auditor shall post it in a conspicuous place in his office, and the said commissioner of public lands shall notify the applicant of the appraisalment and of the notice to the auditor, and that said board will allow the applicant twenty days in which to show wherein said appraisalment is defective, excessive or unjust, which protest, if any be made and filed, shall be considered by said board, and notice of their action shall be sent to the applicant. [Amendment, approved Mar. 12, 1903; L. 1903, p. 113.]

§ 2144. Public Sale of—Procedure.

That the board of appraisers and the commissioner of public lands are hereby authorized to offer for sale and sell, under the provisions of section 2144 to 2148, inclusive, of Ballinger's Annotated Codes and Statutes of Washington, the following described real estate, to wit: Beginning at a point one and fifty-hundredths chains west of the N. E. corner of the N. W. $\frac{1}{4}$ of the S. W. $\frac{1}{4}$ of section 36, Tp. 10 N., R. 38 E., W. M., running thence south $48\frac{1}{2}$ degrees east, $4\frac{80}{100}$ chains; thence south 56 degrees west, 9.93 chains; thence north 34 degrees west, 6 chains; thence north 56 degrees east, 6.05 chains; thence east 3.50 chains to place of beginning: Provided, however, That such land shall not be

sold for less than ten dollars per acre: And provided, further, That said lands shall never be used for any other than cemetery purposes. [Approved Mar. 18, 1901; L. 1901, p. 312.]

Reservations.

That all of the southeast quarter of the southeast quarter, the west half of the southeast quarter and lots 2 and 3, all in section 24, in township 22, north of range 26, east of Willamette Meridian, in Douglas county, state of Washington, is hereby reserved from sale or lease, and the same shall not be sold or leased until directed by the legislature of the state of Washington.

An emergency exists and this act shall take effect immediately. [Approved Feb. 28, 1901; L. 1901, p. 24.]

§ 2145. Confirmation of Sale of School Land, etc.

That the member [s] of the said board of appraisers, or the county auditor conducting the sale, shall, upon making sale of any school land, or stone, mineral or timber thereon, report such sale to the said board of appraisers, as provided in this act, together with other information touching the same, as the said board shall have prescribed, and within ten days from the date of the reception of such report by the commissioner of public lands, if no affidavit showing that the interests of the state in such sale were injuriously affected by fraud or collusion shall have been filed with said board, and it shall appear from such report that the sale was fairly conducted, and that the purchaser was the highest bidder at such sale, and that his bid was not less than the appraised value of the property sold, and if the said commissioner of public lands shall be satisfied that the land sold would not, upon being readvertised and sold, sell for at least twenty-five per cent more than the price at which it shall have been sold, and that the payment required by law to be made at the time of making the sale has been made, and the best interests of the state may be thereby subserved, the secretary of the board of state land commissioners shall enter upon his records a confirmation of said sale and thereupon certify the same to the commissioner of public lands, who shall issue to the purchaser a contract of sale, as in this act hereinafter provided.

Subdivision of Tracts of School Lands.

Whenever the holder of any contract of purchase or [of] any state or school land shall surrender the same to the commissioner of public lands with the request to have the same divided into two or more tracts, it shall be lawful for the commissioner to issue the same provided the proposed subdivision shall not be less than the regular government or public subdivisions, and provided that no new contract or lease shall issue while there is due and unpaid any interest, rental or taxes on the land held under said contract or lease, nor in any case where the commissioner shall be of the opinion that the state security would be impaired or endangered by the proposed division; and for all new contracts or leases a fee of \$2 for each new contract or lease so issued shall be paid by the applicant, and said fee shall be paid into the state treasury with the other fees of the office. Any sale or lease of state lands made by mistake, or not in accordance with law, or obtained by fraud or misrepresentation shall be void.

and the contract of purchase or lease issued thereon shall be of no effect, but the holder of such contract or lease shall be required to surrender the same to the commissioner of public lands, who shall, except in the case of fraud on the part of the purchaser, cause the money to be refunded to the holder thereof, provided the same has not been [paid] into the state treasury. [Amendment, approved Mar. 12, 1903; L. 1903, p. 114.]

§ 2145. Tide lands—Confirmation of sale.—Mandamus will not lie to compel the board of appraisers of state lands to readvertise and resell a tract of tide land upon the application of a purchaser who offers twenty-five per cent more than it

was sold for, since Laws 1897, page 240, section 15, which authorizes a resale under such circumstances, makes it discretionary with the board whether or not a resale shall be ordered: *David v. Guich*, 30 Wash. 266, 70 Pac. 497.

§ 2149. Terms of Lease of—Deposit for.

That all school and granted lands of the state of Washington may be leased for a term of six years or less to the highest bidder at public auction in the following manner: Any person or persons desiring to lease any of such lands shall make application in writing to the commissioner of public lands of this state; each application shall be accompanied with a deposit of \$10.00, such deposit to be in the form of a draft on some bank, a post office or express money order, or may be paid in cash. In case the lands so applied for shall be leased at the time they are offered for lease, then such deposit shall be returned to such applicant by the commissioner of public lands; but if the land shall not be leased when so publicly offered for lease, then such deposit shall be declared forfeited to [the] state, and the commissioner of public lands shall pay the said deposit over to the state treasurer, who shall place the same to the credit of the general fund of the state. [Amendment, approved Mar. 12, 1903; L. 1903, p. 115.]

§ 2153. State Lands—Returns of County Auditors.

When any of such lands shall have been so leased by the county auditor, the said auditor shall at once proceed to certify a list of such lands to the commissioner of public lands, giving the name of the lessee, the post office address, term of lease, lease price per annum, amount paid on lease, and any other information required by the commissioner of public lands; the auditor shall also remit all moneys so paid to him on lease to the said commissioner, who shall issue his receipt in duplicate therefor, the original receipt to be sent to the lessee and a duplicate thereof to be kept in his office, and pay the money over to the state treasurer and take his receipt therefor: Provided, That lands held under lease shall not be offered for sale, or sold, during the life of the lease, except upon application of the lessee. [Amendment, approved Mar. 12, 1903; L. 1903, p. 115.]

§ 2153. Tide lands—Lease of, restricting sale.—A lessee of tide lands who holds same under Laws 1897, page 243, section 23, which provides "that lands held under lease shall not be offered for sale or sold except to the lessee if the lessee shall keep his lease in good standing," but who

waives such limitation in his favor and applies to the commissioner of public lands for the sale of his leased premises at public auction, cannot, where the lands are struck off to a higher bidder than himself, come in afterward and secure a preference right of purchase by tendering the

amount of the highest bid: State ex rel. Bussell v. Bridges, 23 Wash. 82, 62 Pac. 449.

Public lands; what are

§§ 2157, 2158. **School lands—Contracts for purchase of.**—Laws of 1897, page 229, sections 27, 28, authorizing the extension of all contracts issued by the state "to purchasers of school or other lands," upon payment of delinquent and accruing interest, applies to contracts for tide lands as

well as to those for granted lands, since section 5 (Bal. Code, § 2134) of the same act declares that "public lands" and "state lands" shall be deemed synonymous, whenever used in the act, and that all sorts of granted lands, school lands, university lands, tide lands, shore lands and harbor areas are included in the term "public lands": State ex rel. Improvement Co. v. Bridges, 19 Wash. 431, 53 Pac. 545.

§ 2158. Extension of Time for Payment.

The time for making payment of principal on any such contracts where one-tenth or more of the purchase price has been paid, is hereby extended to July the 1st, 1909: Provided, That all delinquent interest due on such contracts in section 27 of this act and all interest falling due on such contracts thereafter is paid annually on the date stated in such contracts. [Amendment, approved Mar. 12, 1903; L. 1903, p. 116.]

§ 2160. Prior Lessee's Right to Re-lease.

The prior lessee may, if he so desires, exercise the preference right to re-lease at the highest rate bid: Provided, however, That the owner of improvements placed on school lands held under lease from the state when the terms of such lease have been fully complied with shall have preference right to re-lease the same or any part thereof for a period of thirty days from the expiration of such lease in the following manner: "The owner of such improvements shall make application in writing for the re-lease of such lands, certifying under oath as to the value and character of the improvements placed thereon, setting forth the amount bid for the re-lease of the same, which bid shall be considered by the commissioner of public lands and if it be deemed sufficient and to the best interests of the state to accept said bid, the said commissioner shall proceed upon the receipt of the first year's rental to issue a new lease to such bidder in accordance with said bid as provided in section 23 of this act:" And provided further, That the appraisalment of all leased lands shall be made once every five years or oftener if deemed necessary. [Amendment, approved Mar. 8, 1899; L. 1899, p. 77; to take effect ninety days after adjournment.]

§ 2161. Removal of Improvements.

At any time during the existence of a lease the lessee may, with the consent of the board of state land commissioners, first obtained, by written application, showing the cost and benefits to be derived thereby, purchase or acquire a water right in order to irrigate the land leased by him, and if such water right shall become a valuable and permanent improvement, then, in case of the sale or lease of such lands to other parties, the old lessee shall be entitled to receive the value thereof as in case of other improvements which he may place upon said land. Improvements made upon school, granted and other lands by lessees from the state in cases in which the lessee yields his lease to the state prior to any application to purchase the land so leased, such as are capable of

removal without damage to the land, may be removed by the original lessee, or at his option may remain subject to purchase, by any purchaser who shall apply to purchase the land within a period of three years from the expiration of said lease.

Each assignee of a bona fide purchaser or lessee of any of the state school and granted lands is subject to and governed by the provisions of the law applicable to the purchaser or the lessee of whom he is the assignee, and he shall have the same rights in all respects as the original purchaser or lessee of the same class of lands: Provided, The assignment is approved and entered of record by the commissioner of public lands. No lessee or assignee of any lease of state lands leased as scab or pasture lands shall be permitted to use the same for any other purpose than that expressed in the lease: Provided, Said lessee or his assigns may be permitted to clear, plow and cultivate all or any part thereof upon surrendering the said lease and requesting the commissioner of public lands to issue an agricultural lease in lieu thereof; upon the payment of the fixed rental under the appraisalment of said land the commissioner shall issue a new lease for the unexpired term thereof. [Amendment, approved Mar. 12, 1903; L. 1903, p. 116.]

§ 2168. Trespass on State Lands—Penalty.

If any person shall cut down, destroy, injure, or cause to be cut down, destroyed or injured, any timber standing, growing or felled upon any of the lands of the state of Washington before deed shall have been issued by the state therefor as provided by law, or shall take or remove or cause to be taken or removed from any such lands, any timber, wood, clay, sand or other material or substance thereon, or shall dig, quarry, take or remove any mineral (except by contract with the state), earth or stone from such lands, or shall cause to be dug, quarried, taken or removed any mineral (except by contract with the state), earth or stone from such lands, or shall otherwise injure, deface or damage, or shall cause to be injured, defaced or damaged any such lands, he shall be deemed guilty of a misdemeanor.

Exceptions.

That nothing in this act shall be so construed as to prevent any person who shall lease said lands or hold the same under contract with the state for the purchase thereof, and occupy the same for the purpose of a home, from cutting such timber as may be necessary for domestic use or to clear land for actual cultivation: Provided, That such lessee or contractor may sell such timber so cut in good faith for the purpose of clearing such land for cultivation: Provided further, however, That before any timber may be sold by any such lessee or contractor he must first obtain the written consent of the commissioner of public lands of the state of Washington to such sale; otherwise such lessee or contractor shall not have the benefit of the provisions of this section.

Penalty.

Any person or persons violating the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof, be punished by a fine of not

less than twenty-five dollars nor more than one thousand dollars, or by imprisonment in the county jail of the county in which such conviction was had, for a time not less than one month and not more than one year, or by both fine and imprisonment. [Approved Mar. 6, 1899; L. 1899, p. 47.]

§ 2169. Tide lands, classification of.— Under Laws 1897, page 248, section 39, which provides that tide lands of the first class shall comprise tide lands “within or in front of the limits of any incorporated city or town, or within two miles thereof on either side,” and all tide lands not included in the above class shall be known as second class, the term “in front of the limits of any incorporated city” must be construed as referring to only such lands

as lie adjoining and in front of the limits of a city; and the term “within two miles thereof on either side” should be construed as referring to such tide lands as are located, by measurement along the general direction of the city shore line, within a distance of two miles from either of its two boundary lines, which extend inland from such shore line: State ex rel. Lehman v. Bridges, 24 Wash. 363, 64 Pac. 518.

§ 2170. First Class—Survey of.

It shall be the duty of the harbor line commission provided for in this act to survey, plat, examine and appraise any tide or shore lands of the first class not heretofore platted and appraised and said commission may establish harbor lines in front of incorporated cities and towns where such harbor lines have not been heretofore established under the provisions of article 15 of the constitution of this state; and whenever all of the owners and other persons having a vested interest in the lands embraced within any such plat or within any portion of such plat embracing all the land in such plat, bounded by water ways heretofore established and the upland and deep water, shall petition the state land commission by filing a petition therefor with the commissioner of public lands, the state land commission is authorized and empowered to replat the lands described in said petition and all unsold land within such replat shall be reappraised in the manner provided for original appraisements of tide lands. All streets, alleys, water ways and other public places embraced within any such plat or portion of plat vacated by the replat hereby authorized shall vest in the owner or owners abutting thereon. If in the preparation of such replat by the state land commission it becomes desirable to appropriate any tide land which has heretofore been sold for use as streets, alleys, water ways or other public places, all persons interested in the title shall join in the dedication of such replat before the same shall be effected. No water ways laid out prior to January 1, 1900, shall be vacated. All plats and replats provided for in this section shall be in triplicate. Within thirty days after the adoption of such replat by the commission one copy shall be filed in the office of the commissioner of public lands; one copy in the office of the auditor of the county wherein such land is situated and one copy in the office of the city engineer of the city or town wherein such land is situated. Any replat of lands heretofore platted shall be in full force and effect and shall constitute the vacation of streets, alleys and waterways and public places heretofore dedicated and shall constitute a dedication of new streets, alleys or public places and waterways appearing upon such replat when a majority of the city council of the city or town wherein such replatted land is situated shall by resolution approve the same; and if such land is not in any incorporated city or town when a majority of the county com-

missioners of the county wherein such replatted land is situated shall approve the same. Nothing herein contained shall be construed to supersede existing laws relating to the vacation of streets, alleys and public places. This section is intended to afford an additional method of procedure: Provided, If any streets heretofore platted are vacated by the replat and any new street or waterway is so laid out as to leave unsold tide land between such new street or waterway and land heretofore sold, the owner of said tide land heretofore sold shall have the preference right, for sixty days after final approval of such replat, to buy the unsold tide land so intervening at the appraised value.

An emergency exists and this act shall take effect immediately. [Amendment, approved Mar. 18, 1901; L. 1901, p. 326.]

§ 2170a. Streets and Alleys Over Tide Lands.

All streets and alleys, which have been heretofore or may hereafter be established upon, or across tide and shore lands of the first class shall be under the supervision and control of the cities within whose corporate limits such tide and shore lands are situated, to the same extent as are all other streets and alleys of such cities, and all acts of supervision and control thereof by such cities hitherto within one year last past are hereby confirmed and declared valid to the same extent that they would be valid in the case of other streets and alleys of such cities. [Approved Mar. 18, 1901; L. 1901, p. 346.]

§ 2171. **Validating acts of tide land commissioner in laying streets and alleys, etc.**—Where the board of tide land appraisers had no power under the existing statute at the time of appraising tide lands to lay out and plat streets thereon, and there is nothing on their plat as filed to indicate that they attempted to perform such an act, a subsequent statute validating streets theretofore located and platted on tide lands, has no application to the circumstances of the case. Where a par-

ticular tract of tide land has been platted and appraised by the board of tide land appraisers as other tracts were platted and appraised and is not marked as a street nor contains any intrinsic evidence of an intent on the part of the board to lay it out as a street, the evidence of members of the board is inadmissible for the purpose of explaining and contradicting the plat: *Ilwaco v. Ilwaco Ry. Co.*, 17 Wash. 652, 50 Pac. 572.

§ 2171a. La Conner Tide and Shore Land—Reappraisement of.

That the board of state land commissioners shall, on or before the first day of August, A. D. 1901, make or cause to be made a reappraisement of all of the tide lands at, in front of and adjacent to the town of La Conner, in the county of Skagit in the state of Washington, the original appraisement of which is disproportionate to and in excess of the value of such tide lands; and such reappraisement, when made, shall be in lieu of the original appraisement.

That when such reappraisement shall have been made, a copy thereof shall be deposited in the office of the auditor of Skagit county.

Prior Purchasers of.

That when such tide lands shall have been reappraised hereunder, and it has been ascertained that any part or portion thereof has been heretofore sold on an appraisement in excess of the value thereof as shown by such reappraisement, the purchaser, purchasers or their assigns, shall be permitted, and are hereby permitted, to complete the purchase so made upon the valuation as reap-

praised under the provisions of this act, and any partial payment heretofore made on such sale shall be credited to such purchasers or their assigns, as if made under the reappraisement hereby authorized. [Approved Feb. 6, 1901; L. 1901, p. 9.]

§ 2171b. Blaine Tide Lands—Reappraisement of.

That the board of state land commissioners, shall on or before the first day of June, A. D. 1901, make or cause to be made, a reappraisement of any or all of the tide lands, at and in front of the city of Blaine, in the county of Whatcom, in the state of Washington, the original appraisement of which is disproportionate, and in excess of the value of such tide lands, and such reappraisement when made shall be in lieu of the original appraisement.

When such reappraisement shall have been made, a copy thereof shall be deposited by the board of state land commissioners, in the office of the auditor of Whatcom county.

Prior Purchasers of.

When such tide lands shall have been reappraised hereunder, and it has been ascertained, that any part or portion thereof has been heretofore sold on an appraisement in excess of the value thereof, as shown by such reappraisement, the purchaser, purchasers, or their assigns, shall be permitted, and are hereby permitted to complete the purchase so made, upon the valuation as reappraised under the provisions of this act, and any partial payments heretofore made on such sale shall be credited to such purchaser or purchasers, or their assigns, as if made under the appraisement hereby authorized.

An emergency exists and this act shall take effect immediately. [Approved Feb. 4, 1901; L. 1901, p. 5.]

§ 2171c. Vancouver Tide Lands—Reappraisement of.

That it shall be the duty of the harbor line commission to, immediately after the passage of this act, cause a survey of the tide and shore lands within the harbor line on the Columbia river in front of the city of Vancouver to be made.

That after said survey said harbor line commission shall cause the same to be appraised the same as other lands of a similar character are appraised as now provided by law.

Preference to Abutting Owners.

That after said appraisement the same shall be sold according to law: Provided, The owner of the abutting land shall have a preference right of purchase for the period of sixty days. [Approved Mar. 16, 1901; L. 1901, p. 186.]

§ 2171d. Hoquiam Harbor Lines—Re-establishment of.

The harbor line commissioner's map of Hoquiam harbor heretofore filed in the office of the state land commissioner and in the office of the auditor of Chehalis county is hereby declared null and void, and the board of state land commissioners is hereby empowered and instructed, and it shall be their duty as

such board, as soon as practicable hereafter, to locate and establish the harbor lines in Gray's Harbor in front of the city of Hoquiam in conformity with the general laws of this state covering the establishment of harbor lines. Duplicate maps of said harbor lines shall be made and filed, one in the office of the state land commissioner and the other in the office of the auditor of Chehalis county.

Hoquiam Tide Lands—Reappraisement of.

The plats and appraisements of the Hoquiam tide lands in Chehalis county heretofore made and deposited in the office of the commissioner of public lands April 30, 1895, and in the office of the county auditor of Chehalis county April 30, 1895, shall be amended by adding thereto plats and appraisements of so much of the Hoquiam tide lands as may be found to lie between the Hoquiam tide lands set forth on said plats and the inner harbor line as located and established under section 1 hereof. And the state board of land commissioners is authorized and instructed and it is hereby made its duty, as soon as practicable hereafter, to cause the tide lands in front of the said city, between the tide lands set out on said plats and the inner harbor line as located and established under section 1 of this act to be surveyed, platted and appraised. Such survey and plats shall be made as nearly as may be practical in conformity with the general laws of this state relating to the survey and plat of tide lands, and shall be made as nearly as may be in conformity with the surveys and plats of the tide lands in front of the said city of Hoquiam heretofore deposited in the offices of the state land commissioner and the county auditor. All plats shall be made in duplicate and one shall be filed in the office of the state land commissioner and one in the office of the auditor of Chehalis county.

Report to be Filed.

Report of the appraisement of the tide lands herein authorized shall be made in duplicate, one of each shall be filed with the state commissioner of public lands and one with the auditor of Chehalis county.

Preference to Abutters.

The owner or owners of land abutting or fronting upon any of the tide lands herein authorized to be surveyed, platted and appraised shall have the right for sixty (60) days following the filing of the final appraisement and plat of such tide lands with the state land commissioner to apply for the purchase of all or any portion of the tide lands in front of the lands so owned: Provided, That if valuable improvements in actual use prior to February 1st, 1903, for commerce, trade, residence or business have been made upon said tide lands hereinbefore authorized to be platted, surveyed and appraised, by any person, association, corporation, the owner or owners of such improvements shall have the exclusive right to apply for the purchase of the lands so improved for the period aforesaid: Provided, further, That when the abutting upland owner has attempted to convey by deed to a bona fide purchaser any portion of the tide lands heretofore surveyed, platted and appraised the right to purchase being given to such upland owner, shall be considered to apply to such purchaser, or any person, association, or corporation claiming by, through or

under such purchaser to the extent of the tract or right so conveyed. The preference right hereby given to purchase any tide lands abutting or bordering on the harbor area shall carry with it the preference right to lease the harbor area in front of such tide lands: Provided, That the person applying for said preference right or purchase of tide lands shall, within the period limited for exercise of his preference right to purchase tide lands, also apply to lease the harbor area in front of said tide lands.

Notice of Platting and Appraisement.

The general laws of the state in relation to the platting, appraisement and sale of tide lands and shore lands and the establishment and leasing of harbor area, when not inconsistent with this act, shall be applicable hereunder, relative to notice of filing of plats, manner of exercising the preference right of purchase or lease, appeals from the state board of land commissioners, and all other proceedings so far as necessary to carry out the purpose of this act.

There is hereby appropriated out of the general fund the sum of \$4,000, or so much thereof as may be necessary therefor for the purpose of carrying out the provisions of this act, and the state auditor is hereby authorized to draw warrants thereon for said purpose.

An emergency exists and this act shall take effect immediately. [Approved Mar. 6, 1903; L. 1903, p. 43.]

§ 2171e. New Whatcom and Fair Haven Tide Lands—Reappraisement of.

That the board of state land commissioners may, at any time on or before January 1, A. D. 1900, make, or cause to be made, a reappraisement of any or all of the tide lands, at and in front of the cities of New Whatcom and Fairhaven, in Whatcom county, in this state, the original appraisement of which is disproportionate to, and in excess of, the value of such lands, and such reappraisement when made shall be in lieu of the original appraisement.

Report to be Filed.

When such reappraisement shall have been made, a copy thereof shall be deposited in the office of the county auditor of Whatcom county.

Rights of Prior Purchasers.

When such tide lands shall have been reappraised hereunder, and it has been found that any part or portion thereof has been heretofore sold upon an appraisement in excess of the value thereof as shown by such reappraisement, the purchaser or purchasers may, and are hereby permitted to complete the purchase so made upon the valuation as reappraised under the provisions of this act, and any partial payments heretofore made on such sale shall be credited to the purchaser as if made under the appraisement hereby authorized. [Approved Mar. 13, 1899; L. 1899, p. 145.]

Reappraisement of.

Tide lands.—Where the board of state land commissioners, in making a reappraisement of tide lands under the authority of Laws 1899, page 145, duly make such reappraisement at one-fourth the amount of the original appraisement, and add thereto a provision that the hold-

ers of valid contracts for the purchase of any of such lands may complete the purchase, but, where the contracts are in arrears, all accrued interest shall be paid up to date, such provision for the payment of interest constitutes no part of the reappraisement: *Semon v. Callvert*, 27 Wash. 679, 68 Pac. 350.

Rights of Purchasers Prior to.

The practice of the board of state land commissioners in construing Laws 1899, page 145, section 3, as authorizing the requirement that holders of contracts in arrears should pay all arrearages of interest thereon in order to obtain the benefit of such act, will not be followed by the courts, when the act expressly provides that a purchaser shall be permitted to complete the purchase originally made, "upon the valuation as reappraised under the provisions of this act, and any partial payments heretofore made on such sale shall be credited to the purchaser as if made under the appraisement hereby authorized": *Id.*

§ 2175. Tide lands—Abutting owner's right to purchase.—An upland owner who had conveyed the upland, together with the tenements, hereditaments and appurtenances thereunto belonging, had thereby conveyed whatever interests he might have had in the abutting tide lands, and a subsequent conveyance by him of the tide lands to another grantee passed no title thereto. Under such circumstances, the prior grantee has the prior right to purchase the tide lands, under Laws 1895, page 552, section 58: *Seattle etc. Ry. Co. v. Carraher*, 21 Wash. 491, 58 Pac. 570.

Applications to Purchase—Amendment of.

Where an application for the purchase of tide lands accompanied with proper proofs has been made to the state land commissioner, but not filed by him because of defects in the accompanying plat, the application is subject to amendment, and, when so amended, should be considered as relating back to the time when it was first tendered: *Johnson v. Woodworth*, 18 Wash. 243, 51 Pac. 375.

Rights of Owner and Tenants of Abutting Lands.

A tenant of tide lands holding under lease from the upland owner could not, in the absence of fraud, acquire a prior right of purchase, under General Statutes, section 2172, as against his landlord, by making improvements thereon prior to March

26, 1890, even though the lessor had never been in actual possession of the tide land, if the lessee had no other claim of title than his possession under the lease: *Tullis v. Tacoma Land Co.*, 19 Wash. 140, 52 Pac. 1017.

Contests—Pleadings in.

Under Laws 1895, pages 554, 562, sections 61, 82, providing that in contests before the board of land commissioners respecting the right to purchase tide lands, no formal pleadings are necessary, and that on appeal to the superior court the contest may be tried upon the same pleadings unless ordered amended by the court, a judgment in another action, constituting *res judicata*, may be proven without being pleaded. Where one holding a government patent covering upland and tide land conveys a portion of the upland, it passes to the grantee littoral rights in the abutting tide land, and a possession of such abutting tide land by the grantee for more than twenty years, in connection with the state's disclaimer to patented lands, would constitute a perfect title in the grantee. Under the provisions of the statute giving the upland owner the preference right of purchasing adjoining tide lands, no right is given the owner of a piece of tide land to come in as a preferred purchaser of abutting tide land.

Boundaries—Estoppel by Conduct.

Where the boundaries of a disputed strip of tide land have been recognized for twenty-five years both by contract and the conduct of coterminous proprietors as appurtenant to a certain portion of the upland, and the authorities have platted the tide land in conformity with such lines, which have been adopted by the contestants in presenting their respective applications to purchase, the objection cannot be raised by the appellant that the disputed tide land, owing to the conformation of the shore, really abuts upon other lands than those of respondents: *Denny v. Northern Pacific Ry. Co.*, 19 Wash. 298, 53 Pac. 341.

§ 2175a. Right of Abutting Owners to Lease.

That any owner under deed or contract of tide or shore land abutting on harbor area of the state of Washington shall have until the first day of July, 1902, a preference right to apply for, obtain and receive from the state of Washington a lease of the right to build and maintain wharves, docks and other structures upon that portion of the harbor area lying in front of said tide lands, said lease to contain the provisions in such cases provided by law; and any and all leases heretofore issued to any such owner or owners, are hereby validated, ratified and affirmed provided this act shall not affect vested or existing rights.

An emergency exists and this act shall take effect immediately. [Approved Mar. 18, 1901; L. 1901, p. 294.]

§ 2178. Price of Second-Class Tide Lands.

All tide and shore lands other than first class shall be offered for sale and sold in the same manner as school and granted lands, and shall be sold at not less than five dollars per lineal chain, measured on the United States meander line bounding the inner shore limit of such tide or shore lands, and each applicant shall furnish a copy of the United States field-notes, certified to by the surveyor general of the state of Washington, of said meander line, with his application, and shall pay one-tenth of the purchase price on the date of sale. [Amendment, approved Mar. 13, 1899; L. 1899, p. 138.]

§ 2178. As amended by Laws of 1899, page 138, sale of tide lands not first class. On the sale of tide lands of the second class, belonging to the state, upon which there are improvements belonging to an individual, the owner of such improvements, although having lost a preference right of purchase, is entitled to have his improvements separately appraised and the land offered in parcels not exceeding one

hundred and sixty acres in size, but divided into tracts with reference to his improvements: *Sullivan v. Callvert*, 27 Wash. 600, 68 Pac. 363.

Unimproved tide lands are not required to be divided into quantities not exceeding one hundred and sixty acres, when offered for sale by the state land commissioner: *Id.*

§ 2178a. Tide Lands—Second Class—Preference in Sale of.

That the owner or owners of any upland bordering upon shore lands of the second class, shall have a preference right for the period of time hereinafter named, to purchase from the state of Washington such shore lands at the appraised value when the same shall have been appraised as hereinafter provided, together with the costs of sale and costs of application by whomsoever made: Provided, however, That the provisions of this act shall not apply to any shore lands set apart by legislative enactment, for a public road or boulevard, or for any public improvement or use.

Pending Applications.

That in cases where application to purchase any such land has already been made and is still pending undisposed of, such upland owner's preference right shall be exercised within sixty days from the taking effect of this act; and in all cases wherein application may be hereafter made such upland owner shall have thirty days from the time of making such application, if made by himself, or thirty days from the time of service upon him of notice of such application if made by another.

Sale Without Application.

The land commission whenever they shall deem it for the best interests of the state, may place any of said shore lands on the market for sale, without application therefor being first made, and in such case such upland owners or owner shall have notice and preference right for a period of thirty days, as above set forth.

Reappraisement—Platting.

The land commission may have any part or all of the shore lands of the state reappraised, in the event that they shall deem the land to have been heretofore appraised of [at] more or less than its true value. They may also cause

any of said shore lands to be platted, as is provided for the platting of shore lands of the first class, and when so platted such lands shall be disposed of as is provided by law for the sale and disposition of shore lands of the first class, except that the notice and preference right of purchase by the upland owner shall remain in force as provided in this act.

Notice to Abutting Owner.

Service upon the upland owner, as hereinbefore provided, shall be made by the commissioner of public lands or by some citizen of the state by him appointed, by leaving with said upland owner the required notice, or if the upland owner be a nonresident of said state, by mailing to his last known post-office address a copy of the required notice. If he be a nonresident and his address unknown to the land commissioner, notice to him shall not be necessary or required. [Approved Mar. 18, 1901; L. 1901, p. 366.]

§ 2179. **Tide lands—Sale of.**—The provisions of section 70, Laws 1895, page 557, to the effect that tide lands not a portion of or adjacent to the shore shall be sold to the first applicant, after survey made by him, subject to the same conditions and limitations as provided for sale of tide

lands of the second class, is limited to such lands as were not improved and in use for commerce, trade or business on and prior to March 26, 1890, whose sale is regulated by section 65 of the same act: *Oliver v. Dupee*, 16 Wash. 684, 48 Pac. 351.

§ 2180. **Tide and Shore Lands, Leased as Other Granted Lands.**

Tide and shore lands which have not been sold, and for which applications to purchase have not been theretofore filed and are pending, may be leased in the same manner as provided for the lease of school and granted lands: Provided, That when application is made for the lease of tide or shore lands of the second class, adjacent to upland, the same shall be leased per lineal chain frontage, and the United States field-notes of the meander line shall accompany each application as required for the sale of such lands: And provided further, When such lands are separated from the upland by navigable waters each application shall be accompanied by the plat and field-notes of survey of such land applied for as required when making application for the purchase of such lands: And provided further, That tide lands may be leased for a period not to exceed thirty years. [Amendment, approved Mar. 13, 1899; L. 1899, p. 139.]

§ 2181. **Sold as Other Lands.**

All tide and shore lands except as herein expressly provided shall be sold upon the terms provided for the sale of school and granted lands, and within twenty days after the expiration of the sixty days limited in which to file applications for the purchase of tide and shore lands the applicant shall pay to the commissioner of public lands one-tenth of the purchase price thereof, and thereupon the purchaser shall enter into a contract with the state as provided for the sale of school, granted and other lands of this act: Provided, That any accretions that may be added to any tract or tracts of tide or shore lands heretofore sold or that may hereafter be sold by the state shall belong to the state, and shall not be sold or offered for sale until the said accretions shall have been first surveyed and platted under the direction of the commissioner of public lands,

and the adjacent owner shall have the preference right to purchase said lands for thirty days after the same shall be offered for sale: Provided further, That where an appeal is taken the purchaser shall in all cases have twenty days from the day on which the final judgment of the superior court is certified to and filed with the commissioner of public lands in which to make said payment and enter into said contract: And provided further, That in case different persons make application to purchase a lot, tract or piece of tide or shore land within sixty days and no appeal is taken from the determination of the commission as to which person has the first right to purchase, then the findings of the commission shall be final and the successful applicant shall have thirty days from the time when served with notice of such finding, which notice shall be served by mailing a registered letter addressed to the party at his address, which shall be stated in the application to purchase. [Amendment, approved Mar. 13, 1899; L. 1899, p. 132.]

§ 2182. Tide lands—Appeals from commissioner's decision.—The right of appeal to the superior court from the decision of the board of state land commissioners, given by Laws 1895, page 527, applies not only to cases in which the board determines the prior right of purchase between two or more applicants for tide lands, but also to cases in which there is but one applicant and the court determines that the tract applied for is not subject to sale: *Town of Ilwaco v. Ilwaco Ry. etc. Co.*, 17 Wash. 652, 50 Pac. 572.

Where an application for the purchase of tide lands is contested by two other claimants for separate parcels thereof, and all the applications are tried before the board as one proceeding and findings made against the original applicant, such applicant is entitled to bring the matter up for review before the superior court by one appeal as against both contestants: *State ex rel. Maylor v. Superior Court*, 19 Wash. 198, 52 Pac. 1009.

Notice of Appeal.

Under Laws 1895, page 561, section 82, providing that notice of appeal to the superior court from the decision of the board of state land commissioners, as to the prior right to purchase tide lands, must be served upon the respondents, or upon their attorneys, within thirty days after the filing or entry of such decision, service of the appeal notice must be made upon the attorney of record for a respondent, and the superior court can take no jurisdiction of an appeal where ad-

mission of service of the notice appears to have been made by attorneys for respondent other than the attorney of record: *Seattle etc. Ry. Co. v. Simpson*, 19 Wash. 628, 54 Pac. 29.

Record.—Under Laws 1895, page 562, section 82, providing that where an appeal is taken from the board of state land commissioners to the superior court, the board shall prepare and certify under the hand of its secretary, a true copy of all the pleadings and papers connected with the contest, such record may properly, on appeal from the decision of the superior court, be sent to the supreme court, as the transcript in the cause certified by the clerk of the superior court, and it is not necessary to bring it up by a bill of exceptions or a statement of facts: *Oliver v. Dupee*, 16 Wash. 634, 48 Pac. 351.

Hearing on Appeal.

The fact that an applicant for the purchase of tide lands is a contestant against the first applicant for their purchase does not preclude him from prosecuting an appeal from an adverse decision of the board of state land commissioners. Upon an appeal to the superior court from the decision of the board of land commissioners, respecting a contest for the purchase of tide lands, the court should hear the appeal upon its merits, and not dismiss it on the ground that appellant's application was incomplete and did not conform to the law in every particular: *Id.*

§ 2182a. Public Land—Appeal from Order of Board.

Penalty for Failure to Prosecute Appeal—Preference.

In all cases involving the prior privilege of purchase of tide lands of the first class, wherein appeals have been or shall be taken from any decision of the board of state land commissioners to the superior court, and in which no

trial has been or shall be had in said superior court for a period of time exceeding two years after the date of the taking of such appeal, the preference privilege of purchase given to the abutting upland owners and to improvers of such tide lands, shall be and the same is hereby declared to be withdrawn and canceled: Provided, however, That before any such withdrawal or cancellation shall take place or effect as to any tide lands involved in any such appeal now pending a notice of ninety days shall be given to all parties to the appeal by the attorney general on behalf of the state of the intention of the state to enforce such withdrawal and cancellation.

Duties of Attorney General.

The attorney general of the state is authorized and directed to enter, on behalf of the state, motions of dismissal in all such appeals now pending or hereafter to be prosecuted: Provided, however, That as to appeals hereafter taken thirty days' notice shall be given by the attorney general to the parties to such appeal of the intention of the state to enforce such withdrawal and cancellation.

Reappraisement and Sale.

All lands so withdrawn shall be reappraised and sold in the manner prescribed by law for the appraisement and sale of unapplied for tide lands of the first class. [Approved Mar. 3, 1899; L. 1899, p. 120.]

§ 2183. Leases of Harbor Line Areas by Board of Land Commissioners.

The board of state land commissioners shall have power to lease the right to build and maintain wharves, docks and other structures upon the harbor areas laid out or which shall hereafter be laid out in pursuance of the provisions of article 15 of the constitution of the state of Washington, for such rental and under such general rules as said board shall prescribe, except in so far as the same are or may be prescribed by law; but no such lease shall be made for any term longer than thirty years. The rental fixed and reserved to the state of Washington in each such lease shall be such sum as said board shall fix, not exceeding one per centum of the value as ascertained by the last assessment for state and county purposes previous to the making of each such lease, of a strip of the shore or tide lands (exclusive of the improvements thereon) adjoining the portion of the harbor area embraced in such lease and of equal width, and where such adjoining strip of shore or tide lands is of less width than the harbor area, a value proportional to said width. Said board shall require of each such lessee a bond with sufficient surety, to be approved by the commissioner of public lands, in such penalty, not exceeding twice the amount of the annual rental, but in no case less than five hundred dollars, as may be prescribed by the board, conditioned for the payment by the lessee of the rental reserved in his lease at or prior to the times of payment therein specified, during the term of such lease, or during such part thereof as the board in its discretion shall require to be covered by such bond; and in case only a part of the term of such lease shall be covered thereby, said board shall require of such lessee another like bond, to be executed and delivered within three months and not less than one month prior to the expiration of the period covered by the previous bond, covering the

remainder of the term of the lease, or such part thereof as the board in its discretion shall require to be covered thereby. The board shall have power at any time to summon sureties upon any bond and to examine into the sufficiency thereof, and if it shall find the same to be insufficient it shall require the lessee to file a new and sufficient bond within thirty days after receiving notice so to do, under penalty of cancellation of the lease; and the board shall have power to cancel any lease for a substantial breach by the lessee of any of the conditions thereof, or for lack of a bond therewith as herein required. The lessee of any part of such harbor area may at his or its option, improve the same in such manner, subject to the approval of the board and to such extent as such lessee shall elect. The application for, or the making or acceptance of any lease herein authorized shall not work any estoppel against either party thereto or against those in privity with either party, as to any right or claim which might otherwise be made or contested. Any holder of any lease made prior to and in full force on the 1st day of March, 1899, who has theretofore fully complied with all the requirements of law relative to such leases, but no other person, shall be entitled upon making application therefor to said board, to have the rental reserved by his lease adjusted in conformity with the provisions of this section; but such adjustment shall not apply to any rental previously paid or accrued. If the person, association or corporation having the preference right to lease any part of any such harbor area has not exercised or shall not exercise such right within such time and in such manner as may be prescribed by said board in its rules and regulations, then said board whenever it shall deem it advisable that such part should be leased shall give thirty days' notice by publication that a lease of such part of such harbor area for such rental and under such general rules within the limitations of this section as said board shall have prescribed will be sold, at a time and place to be specified in said notices, to the person, association or corporation offering at such public sale to pay to the state the highest sum as a cash bonus for such lease; and upon the giving of such notices such lease shall be sold and made and delivered, accordingly, the payment of the sum offered by the successful bidder being required at the time of such sale. All the rentals derived from the leases herein authorized shall be paid into the state treasury under such regulations as said board may prescribe, and shall constitute a harbor fund to be used as the legislature may direct; but the sum of one thousand dollars is hereby appropriated to be paid by the state treasurer out of said harbor fund to the commissioner of public lands, as he shall call therefor by warrants drawn on the treasurer against said harbor fund, to be expended by said commissioner, and he is hereby authorized to expend the same so far as necessary in the examination of the policy and systems of other states and countries relative to the control and regulation of harbors and water frontage and in the gathering, collating and publication of data respecting the same, and in paying for any advertising which may be done in pursuance of this section, and any part of said sum unexpended by said commissioner prior to the 1st day of January, 1901, shall be repaid by him into the state treasury and credited to said harbor fund. Notwithstanding any such lease now or hereafter existing, the state

shall ever retain and does hereby reserve the right to regulate the rates of wharfage, dockage or other tolls to be imposed by the lessee or his assigns upon commerce for any of the purposes for which the leased area may be used, and the right to prevent extortion and discrimination in such use thereof. [Approved Mar. 13, 1899; L. 1899, p. 225.]

§ 2183. Harbor lines and areas—Powers of commission.—Construed and held to be constitutional in *State v. Bridges et al.*, 19 Wash. 44, 52 Pac. 326.

§ 2187. Tide lands.—Proceeds of sale of appropriated to harbor improvements: See notes to section 4064; *Tacoma Land Co. v. Young*, 18 Wash. 495, 52 Pac. 244.

§ 2192. State Land Commissioner—Fees.

That the commissioner of public lands for services performed by him as such may charge and collect the following fees: (1) For a copy of any record, document or paper on file in this office, fifteen cents per folio; (2) for affixing a certificate and seal, \$1.00; (3) for each original contract of sale, lease, bill of sale, or deed, \$1.00; (4) issuance of harbor area lease and approval of bond, \$2.00; (5) approval of each assignment of contract, lease, or bill of sale, \$1.00; (6) for each copy of the plat of a township or any portion thereof, not less than \$2.00; (7) for subdivision and issuance of new contracts, after the original has been entered on the records, \$2.00 for each new contract.

An emergency exists and this act shall take effect immediately. [Amendment, approved Mar. 12, 1903; L. 1903, p. 117.]

§ 2200. School Funds—Investment of.

Whenever there shall be in the permanent school fund of the state one thousand dollars or more, available for investment, the board of state land commissioners may invest the same in national, state, county, municipal, or school district bonds, bearing not less than three and three-fourths per cent interest per annum, paying therefor not more than the par value thereof. Upon such investment being made the state auditor shall draw his warrant on said school fund for the amount so invested, and the bonds so purchased shall be deposited with the state treasurer.

The provisions of this act shall not be construed to repeal or modify the provisions of an act entitled "An act authorizing the issuance of state bonds and the investment of the permanent school funds therein, and declaring an emergency," approved March 8, 1899, or any act amendatory thereof. [Amendment, approved Mar. 14, 1903; L. 1903, p. 143.]

§ 2202. Tide land funds—Investment of, what is.—The act of January 22, 1897, does not authorize the treasurer to pay general fund warrants from moneys in the tide land fund, but merely authorizes him to invest such moneys in the purchase of

general fund warrants; the state, in such cases, goes into the market upon an equality with other investors: *State ex rel. Hellar v. Young*, 18 Wash. 21, 50 Pac. 786.

§ 2204a. Relinquishing State Lands to United States.

The board of state land commissioners shall have authority and power to relinquish to the United States all lands heretofore selected by the territory of Washington or any officer, board or agent thereof, or by the state of Washington

or any officer, board or agent thereof, or which may be hereafter selected by the state of Washington, or any officer, board or agent thereof, in pursuance of any grant of public lands made by the United States or the Congress thereof to the territory or state for any purpose or upon any trust whatever, the selection of which has failed or been rejected or shall fail or shall be rejected for any reason.

An emergency exists, and this act shall take effect immediately. [Approved Mar. 13, 1899; L. 1899, p. 105.]

§ 2204b. Assistant Land Commissioner.

That the commissioner of public lands may appoint an assistant who shall act as chief clerk in his office, and such assistant shall have power to perform any act or duty relating to the office of commissioner of public lands that the commissioner has, and, in case of vacancy by death or resignation of the commissioner of public lands, said assistant shall perform the duties of said office until the vacancy is filled. Such assistant shall subscribe, take and file the oath of office provided by law for other state officers before entering upon the performance of his duties. The principal shall be responsible under his official bond for all of the official acts of the assistant, and may revoke such appointment at his pleasure, and may require his assistant to give him a bond in such sum as the principal may determine, which bond shall be made, executed, approved and filed as other state official bonds.

An emergency exists and this act shall take effect immediately. [Approved Mar. 5, 1903; L. 1903, p. 37.]

§ 2204c. Vacation of Plats of Public Lands.

When in the judgment of the state board of land commissioners the best interest of the state will be thereby promoted, the said board is hereby authorized and empowered to vacate any plat or plats covering school and granted lands and vacate any streets, alleys and other public places therein situated. Any such lands within the limits of any incorporated city or town or within two miles of the boundary of any incorporated city where the valuation of such land shall be found by appraisement to exceed \$100.00 per acre shall be replatted by said board into lots and blocks of not more than five acres in a block and disposed of in the manner provided in section 11, chapter 89, Session Laws of 1897: Provided, That the vacation of any such plat shall not affect the vested rights of any person or persons heretofore acquired therein.

Record of Vacation.

That said board in the exercise of the power and authority herein conferred shall cause the order made by said board to vacate any plat or plats to be entered in the minutes of said board, and at once forward a certified copy thereof to the county auditor of the county wherein said platted lands are located, and said auditor upon the receipt thereof shall cause the same to be recorded in the miscellaneous deed records of his said county.

Petition for.

Whenever all the owners and other persons who have a vested interest in the lands abutting on any street, alley or other public place, or any portion thereof,

in any of the state granted, tide or shore lands lying outside of the limits of any incorporated city or town, which have been platted, or which hereafter shall be platted, shall petition the board of state land commissioners, by filing a petition therefor with the commissioner of public lands, the board of state land commissioners is authorized and empowered to vacate any such street, alley or public place, or part thereof, and all such streets, alleys and other public places and portions thereof which shall be so vacated shall be platted and appraised in the manner provided for the platting and appraising of similar lands: Provided, That where the area of such streets, alleys or other public places so vacated may be determined from the plat already filed as provided by law it shall not be necessary to survey said street, alley or other public place so vacated, but the area thereof may be determined from such plat already filed.

Filing Plats of.

All plats provided for in this act shall be in duplicate, and within thirty days after the adoption of any such plat by the board of state land commissioners, one copy thereof shall be filed in the office of the commissioner of public lands, and one copy thereof shall be filed in the office of the auditor of the county in which such land shall be situated and the same shall be entered of record, notwithstanding the said maps or plats may not strictly conform to the city ordinances pertaining to the platting of lands adjoining said incorporated city or town.

Disposition—Preference.

From and after the filing of such plats, as hereinbefore provided, the lots, blocks, and other parcels into which such streets, alleys, or other public places, or parts thereof so vacated shall be so platted may be disposed of as provided by law in the case of similar lands: Provided, That the owner or owners and other persons who have a vested interest in the lands abutting on any of said lots, blocks or other parcels shall have a preference right for the period of sixty days from the final date of the filing of such plats and of the appraising of such lots, blocks or other parcels to purchase such lot, block or other parcel from the state of Washington at the appraised value thereof. [Approved Mar. 16, 1903; L. 1903, p. 238.]

§ 2211. Powers and Authority of Board of State Land Commissioners.

Aberdeen Tide and Shore Lands—Appraisement of.

The board of state land commissioners of the state of Washington are hereby authorized and required to complete the survey, plats and appraisement of the tide or shore lands embraced within the city limits of the city of Aberdeen, Chehalis county, Washington, and to file the said plats, and appraisement, on or before the first day of July, 1901, in the state land commissioner's office, and a copy thereof in the auditor's office of said Chehalis county.

Notice of Platting and Appraising.

Immediately upon the filing of said plats, and appraisement, the said board of state land commissioners shall give notice by publication in each newspaper

published in said city of Aberdeen that said plats and appraisement are filed, which notice shall be published at least once in each week in each of said papers, for four consecutive weeks, which notice shall contain a further notice that said tide or shore lands are open for sale, according to law.

Preference to Abutting Owners.

The owner or owners of said land abutting or fronting upon the tide or shore lands of the first class shall have the preference right for sixty days following the filing of the final appraisal of the tide and shore lands with the commissioner of public lands and of the copy of the same with the county auditor of Chehalis county, Washington, to apply for the purchase of all or any part of the tide or shore lands in front of the land so owned; and to apply for the leasing of the harbor line area abutting upon such tide or shore lands: Provided, That if valuable improvements in actual use prior to January 1st, 1901, for commerce, trade, residence or business, have been made upon said tide or shore lands by any person, association or corporation, the owner of such improvements shall have the exclusive right to apply for the purchase of the lands so improved for the period aforesaid.

An emergency exists and this act shall take effect immediately. [Approved Mar. 18, 1901; L. 1901, p. 297.]

§ 2211a. Aberdeen Harbor Lines—Re-establishment of.

The harbor line commissioner's map of Aberdeen harbor, heretofore filed in the office of the state land commissioner, and in the office of the auditor of Chehalis county, is hereby declared null and void, and the board of state land commissioners is hereby empowered and instructed, and it shall be the duty of such board, as soon as practicable hereafter, to locate and establish harbor lines in the Chehalis river and in Gray's Harbor in front of the city of Aberdeen, in conformity with the general laws of this state governing the establishment of harbor lines.

Aberdeen Tide Lands—Reappraisement of.

The plats and appraisements of the Aberdeen tide lands in Chehalis county, heretofore made and deposited in the office of the commissioner of public lands, are hereby annulled and set aside. The board of state land commissioners is authorized and instructed, and it is hereby made its duty as soon as practicable hereafter, to cause the tide lands within the limits of the city of Aberdeen to be surveyed, platted and appraised. Such survey and plat shall be made as nearly as may be in conformity with the general laws of this state relating to the surveying and platting of tide lands. All plats shall be made in duplicate and one shall be filed in the office of the state land commissioner, and one in the office of the auditor of Chehalis county.

Basis of Reappraisement.

In making the appraisement of the tide lands mentioned in the preceding section, excepting as to improvements, the board of state land commissioners shall use the same basis of valuation, as nearly as may be, upon which the lots and parcels of tide lands were originally appraised, as shown in volume two of

Appraisements of Tide and Shore Lands of Chehalis County, as heretofor [heretofore] made by the local board of tide and shore land appraisers, now on deposit in the office of the state commissioner of public lands, applying the same, as near as may be, with due regard to location and proportionate areas, so that the appraisal hereby directed to be made shall conform as near as may be to said former appraisal, according to said record thereof so on deposit. The record of such appraisal shall be made in duplicate, one to be filed with the state commissioner of public lands and one with the auditor of Chehalis county.

Preference to Abutting Owners.

The owner or owners of lands abutting or fronting upon any of the tide lands hereinbefore mentioned shall have the right, for sixty (60) days following the final appraisal and plat of such tide lands with the commissioner of public lands, to apply for the purchase of all or any portion of the tide lands in front of the lands so owned: Provided, That if valuable improvements, and in actual use prior to March 26, 1890, for commerce, trade, residence or business, have been made upon said tide lands by any person, association or corporation, the owner or owners of such improvements shall have the exclusive right to apply for the purchase of lands so improved for the period aforesaid: Provided, further, That the owner of such improvements shall have the right in all cases to purchase in addition to the tide lands covered by such improvements, unoccupied and unimproved tide lands adjoining such improvements sufficient for the necessary and convenient use and enjoyment of such improvements and business, and such right of purchase shall be prior and superior to that of the upland owner or others claiming under him: And provided further, That when the abutting upland owner has attempted to convey by deed to a bona fide purchaser any portion of the tide lands in front of such upland, or littoral rights therein, the right of purchase being given to the upland owner shall be construed to belong to such purchaser, or any person, association or corporation claiming by, through or under such purchaser, to the extent of the tract or right so conveyed. The preference right hereby given to purchase any tide land abutting or bordering upon the harbor area shall carry with it the preference right to lease the harbor area in front of such tide lands, provided that the person applying for such preference right of purchase of tide lands shall within the period limited for exercising his preference right to purchase tide lands also apply to lease the harbor area in front of such tide lands. Wherever there is no tide land between the harbor area and the upland the owner of such upland shall have a like preference right to lease the abutting harbor area.

Notice of Filing Plats of.

The general laws of this state in relation to the platting, appraisal and sale of tide and shore lands and the establishment and leasing of harbor areas, when not inconsistent with this act, shall be applicable hereto relative to notice of filing of plats, manner of exercising the preference right of purchase or lease, appeals from the state board of land commissioners and to all other proceedings except as herein otherwise expressly provided.

There is hereby appropriated out of the harbor area fund the sum of \$3,000, or so much thereof as may be necessary therefor, for the purpose of carrying out the provisions of this act, and the state auditor is hereby authorized to draw warrants thereon for said purpose.

An emergency is declared to exist and this act shall be in force from and after its passage and approval. [Approved Feb. 26, 1903; L. 1903, p. 22.]

§ 2212a. Leases of Gas and Petroleum Lands.

The commissioner of public lands of the state of Washington is hereby authorized to execute leases and contracts for the mining and extraction of petroleum and natural gas from any land belonging to the state or from any lands in which the state may hereafter acquire title, subject to the conditions hereinafter provided.

Who may Lease.

Any citizen of the United States finding petroleum or natural gas upon any lands belonging to the state of Washington may apply to the commissioner of public lands for a lease of any amount of such land not to exceed one section.

Applications to.

Application shall be made in like manner as the application is made for the leasing of agricultural lands.

Rentals—Limitations.

No lease shall be made by the state for any sum less than twenty-five (\$25.00) dollars per quarter section of land for each year during the term of said lease, and in addition thereto the said lease shall provide that the state shall be entitled to receive a sum not less than ten per cent of the gross value of all petroleum and natural gas extracted therefrom during the term of the said lease, payable semi-annually during said term. The term of said lease to be any term not to exceed ten years.

Product Kept Separate—Report.

Persons leasing lands under the provisions of this act shall mine, take out, keep, maintain, ship and sell all petroleum and natural gas mined upon or taken from the lands so leased, separate and distinct from all like products taken from other lands, and shall submit to the commissioner of public lands, at stated periods to be fixed by said commissioner, a statement showing the total product taken from said leased lands, the total shipments of such products, and an account showing the sales of all such products. The commissioner shall make all necessary rules and regulations necessary to carry out the provisions of this act, and to protect the interests of the state. The books and accounts of every person leasing lands under the provisions of this act shall be open to inspection by the state land commissioner, or such persons as he may designate at all times, and the property leased, together with all buildings, machinery, storage tanks and appliances of every kind and nature whatsoever, shall be subject to inspection and examination by the land commissioner. The reports required under this act shall be made under oath, upon forms prescribed by the

commissioner. Failure on the part of any lessee hereunder to comply with the terms and conditions of this act, or of his lease, shall forthwith work a forfeiture of the lease. No such forfeiture may be waived. The commissioner of public lands shall incorporate in every such lease such other provisions and conditions not inconsistent with the provisions and conditions contained in this act as may in his judgment be advantageous to the state.

Preferences.

Any person now holding leases for agricultural purposes shall have a first right to lease the lands held by them as lessees of the state of Washington, and upon notice to them by the commissioner of public lands they shall within thirty days thereafter exercise their right to lease said lands under the provisions of this act, and upon their failure so to do their right to lease such land for mining for petroleum and natural gas shall be at an end, and the said land shall be deemed to be open and unoccupied public lands for the purposes of this act only, and the same shall be subject to lease for mining for petroleum and natural gas as if the same were fully owned and in the possession of the state. Any person so holding the lands of the state for agricultural purposes who shall within sixty days from the adoption of this act fail to apply to the state land commissioner for such lands shall forfeit all preference to them granted under the terms of this act.

Development—Begun When.

All leases under the terms of this act shall be deemed to be void and of no effect unless the lessee or his assigns shall commence the work of drilling or boring for petroleum oil and gas within the period of one year from and after the date of the execution of such lease: And provided further, That such work shall proceed continuously and at no time cease for a greater period than ninety (90) days: Provided, That whenever oil and natural gas be discovered by such work in paying quantities then no further work need be done under the terms of such lease than to mine, secure and store the same, but failure to operate after discovery of oil or natural gas in paying quantities for any period of ninety consecutive days shall work a forfeiture of the lease.

Rights of Prior Lessees.

If land is leased by the state upon which an existing lease for agricultural purposes is held by some person other than the lessee under the terms of this act, that the lessee hereunder shall pay to such person so holding said land under lease for agricultural purposes reasonable compensation for any and all damage sustained by him to growing crops or for the use of said premises during the development of the said petroleum and natural gas lands by mining and boring and holding possession thereof.

An emergency exists and this act shall take effect immediately. [Approved Mar. 16, 1901; L. 1901, p. 218.]

§ 2213. Leasing Mineral Lands of State.

Any citizen of the United States finding precious minerals upon any lands belonging to the state of Washington may apply to the commissioner of public

lands for a lease of any amount not to exceed eighty acres for prospecting purposes, provided that said applicant has posted up location notice and set corner posts and marked boundary lines as required by the mining laws of the state of Washington: Provided, Any person, persons or corporations to whom a lease or contract has been issued prior to the passage of this act may, by applying to the commissioner of public lands, have the boundaries of their mineral claims or lots changed to conform to the section lines as surveyed by the United States surveyors: Provided, The changing of boundaries does not infringe upon the rights of any other leaseholder or assignee, and shall pay a fee according to the increased area which they may obtain. [Amendment, approved Mar. 18, 1901; L. 1901, p. 313.]

§ 2216. Rent for.

Before any lease shall be granted the applicants shall pay to the state treasurer the sum of five dollars for each forty acres or fraction thereof. The holder of a mineral lease, secured as above stated, shall have two years to develop said mine or mines: Provided, That no more than five tons of ore shall be removed therefrom for assaying or testing purposes until a contract, as hereinafter provided, shall have been executed. [Amendment, approved Mar. 18, 1901; L. 1901, p. 313.]

§ 2217. Contracts—Form of.

At any time prior to the expiration of said lease, the leaseholder, or any assignee thereof, shall have the right to obtain from the said commissioner of public lands a contract which shall bind the state of Washington as the party of the first part, and the person, persons or corporations to whom said contract shall issue as the party of the second part, in a mutual observance of the obligations and conditions as specified therein (the contract provided for in this act shall be as follows):

“This indenture, made this.....day of.....A. D. one thousand eight and, by and between the state of Washington, party of the first part, and....., party of the second part,

Witnesseth, that the party of the first part, in consideration of the sum of ten dollars to it in hand paid by the party of the second part, being the first annual payment as provided for in chapter 102, section 7, of the Session Laws of 1897, the receipt whereof is hereby acknowledged, and in further consideration of the covenants and conditions herein contained, to be kept and performed by the part.... of the second part, does hereby contract, lease and demise to the part.... of the second part for a term of thirty years from and after theday of, one thousand eight hundred and, the following described land situated in the county of, in the state of Washington, viz.:....., which premises are leased to the part.... of the second part for the purposes of exploring for, mining, taking out and removing therefrom the merchantable shipping ore, containing copper, lead, silver, gold and other minerals, which is or which hereafter may be found on,

in or under said land, together with the rights to construct all buildings, make all excavations, openings, ditches, drains, railroads, wagon roads, smelters and other improvements upon said premises, which are or may become necessary or suitable for the mining or removal of ore containing copper, lead, silver, gold or other minerals from said premises, with the right, during the existence of this lease, to cut and use the timber found upon said premises for fuel, and so far also as may be necessary for the construction of buildings required in the operation of any mine or mines, on the premises hereby leased, as also the timber necessary for drains, tramways and supports for such mine or mines: Provided, however, that the part.... of the second part shall have the right at any time to terminate this agreement in so far as it requires the part.... of the second part to mine ore on said lands, or to pay a royalty therefor, by giving written notice to the party of the first [part], which shall be served by leaving the same with the commissioner of public lands, who shall officially, in writing, acknowledge the receipt of said notice and the foregoing lease shall terminate sixty days thereafter, and all arrearages and sums which may be due under the same up to the time of its termination, as set forth in said notice, shall be paid upon settlement and adjustment thereof. The party of the first part further agrees that the part.... of the second part shall have the right under this agreement to contract with others to work such mine or mines, or any part thereof, or to subcontract the same, and the use of the said land or any part thereof, for the purpose of mining for ore, with the same rights and privileges as are herein granted to the said part.... of the second part." [Amendments, approved Mar. 18, 1899; L. 1899, p. 337.]

§ 2218. Contract of—Terms—Conditions.

The terms and conditions on which the same may be mined shall be agreed upon by the commissioner of public lands and the lessee: Provided, "That a royalty be paid to the state on the value of the gross output to an amount not less than two per cent thereof and not more than five per cent thereof; said royalty to be paid according to the provisions made in said lease."

Within sixty days prior to the expiration of the lease, the lessee may apply to the commissioner of public lands for a new lease. Therefore the commissioner of public lands shall give said applicant a prior right, and shall, upon the expiration of the old lease issue a new lease to the former lessee on terms as may be provided by law. [Amendment, approved Mar. 18, 1901; L. 1901, p. 314.]

§ 2243a. Oyster Lands—Lease of.

All lands in the waters of the state of Washington lying below extreme low tide, not covered by natural oyster beds, and not in front of any incorporated city or town nor within two miles on either side thereof shall be subject to lease, for the purpose of planting and cultivating thereon artificial oyster beds, under the provisions of this act.

Preferences.

All persons who, prior to the passage of this act, in good faith entered upon lands not in front of any incorporated city or town, nor within two miles thereof

on either side, and planted and cultivated thereon artificial oyster beds, and who continue to occupy and work the same, and who are now in possession of and working said oyster beds in good faith, shall have the prior right to lease for a period of six months from and after the passage of this act.

Applications.

Applications for the lease of land for the cultivation of deep sea oysters under the provisions of this act shall be made to the commissioner of public lands and shall be accompanied by a map or plat of the lands so to be leased. The commissioner of public lands shall upon receipt of such application direct the fish commissioner to immediately inspect the lands applied for and report to the commissioner of public lands his findings as to the following facts:

First. Whether the land or any portion thereof is a natural oyster bed.

Second. Whether it be necessary in order to secure adequate protection to any natural oyster bed to retain to the public domain the land the application for the lease of which has been made or any part thereof.

Third. Whether the land or any portion thereof having been a natural oyster bed within ten years past may reasonably be expected to again become such within ten years in the future.

Term of Lease—Rentals.

In case all of the above three questions be answered negatively, the commissioner of public lands shall immediately issue to the applicant therefor a lease for the term of twenty (20) years of the lands so applied for at an annual rental of twenty-five cents per acre. Should the fish commissioner answer one or more of the above three questions affirmatively, the commissioner of public lands shall investigate the matter at a public hearing in the county where the lands in question are situated. Due notice of such hearing shall be given by the said land commissioner by publishing a notice to that effect in some paper of general circulation in the county, at the expense of the applicant, not less than one week and not more than four weeks before the date of hearing. Unless at such hearing it be conclusively shown to the commissioner of public lands that in the matters at issue the fish commissioner was in error, he shall refuse to lease such lands or such portion thereof as may be determined by the foregoing restrictions. Application for the lease of lands thus withheld may not be made again within six years, except that the person last making application may repeat the application during the three months next preceding the expiration of the six years.

Descriptions.

All applications for the lease of oyster lands under this act shall, in addition to the surveyor's description by metes and bounds, make description in such local geography as shall suffice to convey a knowledge of its location with reasonable accuracy to persons acquainted with the vicinity.

Limitations of Area.

All applications for lease of oyster lands under the provisions of this act shall be for an area not to exceed forty acres to any one person, and such appli-

cation shall be accompanied by an affidavit under oath, that the party making such application leases said lands for the purpose of oyster culture only.

Conditions of Lease—Reversions.

It shall be expressly provided in the lease of any such oyster land that if at any time after the granting of said lease the lands described therein shall cease to be used for the purposes of an artificial oyster bed, it shall thereupon revert to, and become the property of the state of Washington, and that the same is leased to the lessee only for the purposes of cultivating oysters thereon, and the state of Washington hereby reserves the right to enter upon and take possession of said tract or tracts, if at any time the same is used for any other purpose than the cultivation of oysters.

Limitations of Act.

This act shall in no manner apply to the provisions of any act heretofore enacted by the legislature of the state of Washington providing for the sale of tide and shore lands for the purpose of oyster planting and the manner of taking oysters from said tide land beds.

Survey and Record.

Survey and description of all tracts applied for shall be in duplicate, one of which shall be filed with and be recorded by the county auditor of the county in which said lands are situated in a book kept by him for such special purpose, and a duplicate description in the office of the commissioner of public lands.

Abandonment—Substitution.

If from any cause any tract or tracts, parcel or parcels of land leased under the provisions of this act shall become unfit and valueless for the purpose of oyster culture, the party having so leased or being in possession of the same, may, upon certifying such fact under oath to the commissioner of public lands and to the auditor of the county wherein such lands are situated, also upon filing under oath a certificate of abandonment of such tract or tracts, parcel or parcels of land, in the office of each of said officials, such party shall then be entitled to lease other lands as hereinbefore provided.

Duties of Fish Commissioner Relating to.

The fish commissioner of the state of Washington may and he is hereby authorized to dredge or permit others to dredge in all the waters of the state of Washington for the purpose of discovering whether any particular waters, not already reserved, leased or appropriated under existing laws, or the provisions of this act, contain oysters in a natural state, and regulate the taking thereof, under such rules as the fish commissioner may prescribe.

An emergency is hereby declared to exist and this act shall take effect from and after its passage. [Approved Mar. 13, 1899; L. 1899, p. 272.]

§ 2253a. State Capitol Building—Authority to Purchase.

The state capitol commission is hereby fully authorized and directed to purchase from Thurston county, Washington, in the manner provided by law and Thurston county is fully authorized to sell to the state of Washington, in

the manner provided by law through the state capitol commission the county court house and grounds now owned and used by said Thurston county in the city of Olympia, at a price not to exceed one hundred and seventy thousand dollars, and upon such purchase being made by the state capitol commission, the same shall be used, together with such additions thereto as may be erected, as the capitol building of the state of Washington. The expense of purchasing said court house and grounds and the erection of any additions and the furnishing of the same shall not exceed three hundred and fifty thousand dollars.

Additional Ground for.

In case said capitol commission shall purchase the said courthouse and grounds, it shall purchase such other grounds adjoining said courthouse as may be necessary, and add to said court house, a house and senate chamber and committee rooms, and such further additions as are necessary to fit it for the use of the state—said additions to be of the same general design, material and architecture as said courthouse now is, and for that purpose may expend any remaining portion of the appropriation made by this act, after paying for the said Thurston county courthouse grounds. Said house and senate chamber and committee rooms shall be ready for occupancy for the legislature of the state of Washington when it assembles January, 1903.

Conditions Precedent to Purchase.

The state capitol commission shall not proceed herein in the purchase, construction or completion of said capitol building until the warrants upon the state capitol building fund for the entire amount herein appropriated in the sum of three hundred and fifty thousand dollars, are sold at not less than par, and the proceeds thereof placed with the treasurer of the state.

Thurston County Bonds in Payment.

In case the courthouse and grounds are purchased by the state as aforesaid, the bonds of Thurston county, held in the permanent school fund of the state, shall be surrendered to said Thurston county, as a part of the purchase price thereof, the full amount of said bonds shall be replaced in the permanent school fund and the interest due thereon shall be placed in the current school fund, and the entire amount of both principal and interest shall be taken out of the appropriation made by this act before said bonds and the interest thereon shall be surrendered.

Architect for Additions.

In order to carry out the provisions of this act, the state capitol commission is hereby empowered to enter into such agreement with an architect to be selected for the furnishing and purchasing of such plans for any additions to said courthouse as shall guarantee the cost of building and furnishing said capitol building within the limit herein specified; upon the submission and acceptance of said plans, said capitol commission shall proceed to advertise for bids for the construction of said additions with such limitations as to time and notice as they shall provide.

State Guarantees Payment of Interest.

In order to facilitate the sale of warrants and prevent the sacrifice of the state lands donated by the general government for the purpose of erecting a capitol building, the state of Washington hereby guarantees the interest on warrants hereafter issued for the purchase, completion and furnishing of said building: Provided, however, That said interest shall not exceed five per cent per annum, and be due and payable annually upon the first day of April of each year, upon the presentation of the warrants at the office of the state treasurer.

Appropriation for.

That the sum of seventeen thousand five hundred dollars, or so much thereof as may be needed, is hereby appropriated out of the general fund for the purpose of paying the interest upon said warrants, all interest paid as aforesaid, to be returned to the general fund next after the payment of the appropriation heretofore and herein made, from the proceeds of the sale of lands granted to the state for the purpose of erecting public buildings at the state capital: Provided, That the guaranty of interest on warrants as herein provided in section 6 of this act, shall not apply to warrants herefore issued upon the state capitol building fund.

There is hereby appropriated out of the state capitol building fund, for the purchase, completion and furnishing of said building, and all expenses incident thereto, the sum of three hundred and fifty thousand dollars, or so much thereof as may be necessary, and all the unexpended portion of the nine hundred and thirty thousand dollars heretofore made out of said capitol building fund, is hereby repealed, and this appropriation is to stand in lieu of such unexpended appropriation. [Approved Mar. 2, 1901; L. 1901, p. 54.]

Capitol building.—The act of March 2, 1901 (Laws 1901, p. 54), took effect immediately upon its passage and approval, since it must be construed as an appropriation bill, falling within the exception contained in article 2, section 31, of the state constitution, which declares that “no law,

except appropriation bills, shall take effect until ninety days after the adjournment of the session,” unless otherwise directed by the legislature in case of an emergency: State v. Rogers, 24 Wash. 417, 64 Pac. 515.

§ 2275. Education—New School Districts, how Organized.

For the purpose of organizing a new district a petition in writing shall be made to the county superintendent, signed by at least five heads of families residing within the boundaries of the proposed new district, which petition shall describe the boundaries of the proposed new district and give the names of all the children of school age residing within the boundaries of such proposed new district, at the date of presenting said petition. The county superintendent shall give notice to the parties interested by causing notices to be posted at least twenty (20) days prior to the time appointed by him for considering said petition, in at least three of the most public places in the proposed new district, and one on the schoolhouse door of each district affected by the proposed change, or if there be no schoolhouse, then in one of the most public places of said old district, and shall, on the day fixed in the notice, proceed to hear said petition,

and if he deem it advisable to grant the petition he shall make an order establishing said district and describing the boundaries thereof, and shall certify his action to the board of county commissioners at their next regular meeting: Provided, That when in the formation or alteration of any school district, or after the refusal of the county superintendent to form or alter a school district as prayed for, if any person or school district affected by such formation or alteration, or by such refusal to form or alter a school district as prayed for, shall feel aggrieved by the action of the county superintendent, he or it may appeal to the board of county commissioners of his or its county. Said appeal shall be filed with the clerk of the board of county commissioners within twenty days after the action complained of, and shall state in a clear and concise manner the matters complained of, which statement shall be verified by the affidavit of the appellant or appellants or some one in his, her or its behalf. Copies of the notice of appeal shall be filed with the county superintendent and with the clerk of each school district affected by the appeal, at the time of filing said notice with the clerk of the board of county commissioners: Provided, That in case of a vacancy in the office of clerk of such school district, then the copy of the notice of appeal may be filed with any member of the school board of such district. The county commissioners shall, at their next regular meeting, appoint a time and place when such appeal shall be heard. At such appointed time and place they shall hear and determine said appeal, and shall have power to summon witnesses and their action shall be final: And provided further. That at such hearing before the county superintendent he shall hear testimony offered by any person or school district interested and find and determine the amount of bonded and other indebtedness of all the school districts affected by the formation of the new district and shall find and determine the amount and value of all school property retained by the old district or districts, and shall find and determine the amount, as nearly as may be, of the said outstanding indebtedness that was incurred for permanent improvements and the amount incurred for current expenses, and shall make an equitable adjustment of all debts and liabilities between such new district and the old district or districts. and the proportion and amount of such debts and liabilities to be paid by each district, and the decision of said county superintendent shall be final, unless appealed from within the time provided by law: And provided further, That every school district which shall be enlarged or created from territory taken from any other school district or school districts shall be liable for a just proportion of the existing debts and liabilities of the school district or school districts from which such territory shall be taken: Provided, That in such accounting one school district shall not be charged with any debt or liability then existing, incurred in the purchase of any school district property or in the purchase or construction of any buildings or permanent improvements then in use or under construction (or for which obligations have been incurred) which shall fall within and be retained by the other school district, but each district retaining such property shall be liable for the indebtedness therefor: Provided further, That this shall not be construed to affect the rights of creditors: Provided further, That in case of an appeal by the school district the affidavit on

appeal may be made by any school district officer of the school district so appealing: Provided further, That when an appeal is taken to the board of county commissioners as herein provided they shall hear and determine the matter de novo and render such a decision as should have been made by the county superintendent. [Amendment, approved Feb. 21, 1899; L. 1899, p. 19.]

§ 2276. Changing District Boundaries.

For the purpose of transferring territory from one district to another or enlarging the boundaries of any school district, a petition in writing shall be presented to the county superintendent, signed by a majority of heads of families residing in the territory which it is proposed to transfer or include, which petition shall describe the change which it is proposed to have made. It shall also state the reason for desiring said change, and the number of children of school age residing in the territory to be transferred: Provided, That in the case of any school district which has become depopulated of children of school age, or in the case of any school district that has not maintained at least the minimum amount of school required by law during the last preceding school year, or in the case of territory which is not now a part of any school district, the county superintendent shall have power to attach the territory of such school district to some contiguous school district or school districts, without being petitioned so to do; or such territory not now a part of any school district: Provided, further, That if any school district so disorganized shall have any outstanding warrants or bonds, the assessable property of the district shall be holden for the payment of such indebtedness, and a special tax shall be levied against such assessable property for the payment thereof. The county superintendent shall give notice to parties interested by posting or causing to be posted notices at least twenty days prior to the time appointed by him for considering said petition or contemplated change of boundaries, one of which shall be in a public place in the territory which it is proposed to annex or transfer, and one on the door of the schoolhouse in each district affected by the change; or if there be no schoolhouse in such district, or if there be more than one, then in some public place in such district or districts; and at the time stated in said notices he shall proceed to make a thorough and fair investigation of all facts and conditions pertaining to the matter, and if he deem it advisable he shall make an order fixing the boundaries of the district affected by his action and shall certify his action to the board of county commissioners at their next regular meeting: Provided, That an appeal may be taken in the manner prescribed in section 4 of this act; and in case an appeal shall be taken to the board of county commissioners the county auditor shall within ten days after the decision of said board is rendered, certify the action of the commissioners to the county superintendent: Provided, further, That in all cases of the formation of a new district or the alteration of school district boundaries, the county auditor shall certify the action of the county superintendent or the county commissioners to the county assessor. [Amended 1901; L. 1901, p. 19; amendment, approved Mar. 14, 1903; L. 1903, p. 157.]

§ 2277. Districts to Contain not Less than Four Sections of Land.

In forming new districts, or transferring territory from one district to another, or changing boundaries of districts, no school district shall contain less than four sections of land, unless said district can support six months' school per year after such change of territory: Provided, That the county superintendent may establish a district with less than four sections on a petition signed by eighty per cent of all the heads of families of the proposed district, by and with the consent of the state superintendent of public instruction. [Amended by act of 1899; L. 1899, p. 306; amendment, approved Mar. 19, 1901; L. 1901, p. 371.]

§ 2278a. Schoolhouse Sites, by Eminent Domain—When Exercised.

Whenever any school district shall select any real estate as a site for a schoolhouse, or as additional grounds to an existing schoolhouse site, within the district, and the board of school directors of such district and the owner or owners of the site or any part thereof, or addition thereto so selected, shall be unable to agree upon the compensation to be paid by such school district to the owner or owners thereof, such school district shall have the right to take and acquire title to such real estate for use as a schoolhouse site or additional site, upon first paying to the owner or owners thereof therefor the value thereof, to be ascertained in the manner hereinafter provided.

Petition for.

The board of directors of the school district shall present to the superior court of the state of Washington in and for the county wherein is situated the real estate desired to be acquired for schoolhouse site purposes, a petition, reciting that the board of directors of such school district have selected certain real estate, describing it, as a schoolhouse site, or as additional grounds to an existing site, for such school district; that the site so selected, or some part thereof, describing it, belongs to a person or persons, naming him or them, that such school district has offered to give the owner or owners thereof therefor * * dollars, and that the owner of such real estate has refused to accept the same therefor; that the board of school directors of such school district and the said owner or owners of such real estate are unable to agree upon the compensation to be paid by such school district to the owner or owners of such real estate therefor, and praying that a jury be impaneled to ascertain and determine the compensation to be made in money by such school district to such owner or owners for the taking of such real estate for the use as a schoolhouse site for such school district; or in case a jury be waived in the manner provided by law in other civil actions in courts of record, then that the compensation to be made as aforesaid, be ascertained and determined by the court, or judge thereof.

Notice of, to Owner.

A notice, stating the time and place when and where such petition will be presented to the court, or the judge thereof, together with a copy of such petition, shall be served on each and every person named therein as owner, or otherwise interested therein, at least ten days previous to the time designated in such notice for the presentation of such petition. Such notice shall be signed by

the prosecuting attorney of the county wherein the real estate sought to be taken is situated, and may be served in the same manner as summons in a civil action in such superior court is authorized by law to be served.

Adjournment of Hearing.

The court may, upon application of the petitioner or of any owner of said real estate, or any person interested therein, for reasonable cause, adjourn the proceedings from time to time, and may order new or further notice to be given to any party whose interests may be affected by such proceedings.

Findings and Order.

At the time and place appointed for the hearing of such petition, or to which the same may have been adjourned, if the court shall find that all parties interested in such real estate sought to be taken have been duly served with notice and a copy of the petition as above prescribed, and shall further find that such real estate sought to be taken is required and necessary for the purposes of a schoolhouse site, or as a part of or as an addition to a schoolhouse site, for such school district, the court shall make an order reciting such findings, and shall thereupon set the hearing of such petition down for trial by a jury, as other civil actions are tried, unless a jury is waived in the manner provided by law in other civil actions.

Jury—How Selected and Impaneled.

The jury impaneled to hear the evidence and determine the compensation to be paid to the owner or owners of such real estate desired for such schoolhouse site purpose shall consist of twelve persons unless a less number be agreed upon, and shall be selected, impaneled and sworn in the same manner that juries in other civil actions are selected, impaneled and sworn, provided a juror may be challenged for cause on the ground that he is a taxpayer of the district seeking the condemnation of any real estate.

Proceedings.

A judge of the superior court shall preside at the trial and witnesses may be examined in behalf of either party to the proceedings, as in other civil actions, and upon the request of all the parties interested in such proceedings the court shall cause the jury impaneled to hear the same, to view the premises sought to be taken, and upon the request of any less number of the persons interested in the proceedings, the court may cause the jury to view the premises, pending the hearing of the same.

Upon the close of the evidence, and the argument of counsel, the court shall instruct the jury as to the matters submitted to them, and the law pertaining thereto. whereupon the jury shall retire and deliberate and determine upon the amount of compensation in money that shall be paid to the owner or owners of the real estate sought to be taken for such schoolhouse site purposes therefor, which shall be the amount found by the jury to be the fair and full value of such premises; and when the jury shall have determined upon their verdict, they shall return the same to the court as in other civil actions.

When ten of the jurors agree upon a verdict, the verdict so agreed upon

shall be signed by the foreman, and the verdict so agreed upon shall be and stand as the verdict of the jury.

In case a jury is waived, the compensation that shall be paid for the premises taken shall be determined by the court and the proceedings shall be the same as in the trial of issues of fact by the court in other civil actions.

Decree of Appropriation.

Upon the verdict of the jury, or upon the determination by the court of the compensation to be paid for the property sought to be taken as herein provided, judgment shall be entered against such school district in favor of the owner or owners of the real estate sought to be taken, for the amount found as compensation therefor, and upon the payment of such amount by such school district to the clerk of such court for the use of the owner or owners of, and the persons interested in the premises sought to be taken, the court shall enter a decree of appropriation of the real estate sought to be taken, thereby vesting the title to the same in such school district; and a certified copy of such decree of appropriation may be filed in the office of the county auditor of the county wherein the real estate taken is situated, and shall be recorded by such auditor like a deed of real estate, and with like effect. The money so paid to the clerk of the court shall be by him paid to the person or persons entitled thereto, upon the order of the court.

Costs.

All the costs of such proceedings in the superior court shall be paid by the school district initiating such proceedings.

Appeal.

Either party may appeal from the judgment for compensation awarded for the property taken, entered in the superior court, to the supreme court of the state within sixty days after the entry of the judgment, and such appeal shall bring before the supreme court the justness of the compensation awarded for the property taken, and any error occurring on the hearing of such matter, prejudicial to the party appealing, and no bond shall be required of either party appealing from such judgment: Provided, however, That if the owner or owners of the land taken accepts the sum awarded by the jury or court, he or they shall be deemed thereby to have waived their right of appeal to the supreme court.

Effect of Appeal.

An appeal from such judgment by the owner or owners of the land sought to be taken, shall not have the effect to preclude the school district from taking possession of the premises sought, pending the appeal, provided the amount of the judgment against the school district shall have been paid into the clerk of the court, as hereinbefore provided.

Parties—Denomination of.

In all proceedings under this act the school district seeking to acquire title to real estate for a schoolhouse site, shall be denominated plaintiff, and all other persons interested therein shall be denominated defendants; and in all

such proceedings the clerk of the superior court wherein any such proceedings is brought shall charge nothing for his services, except in taking an appeal from the judgment entered in the superior court. [Approved Mar. 16, 1903; L. 1903, p. 193.]

§ 2280. Organization of Graded Schools—Union Districts.

Whenever the residents of two or more adjacent and contiguous school districts may wish to unite for the purpose of establishing a union high school, the clerks of the districts, by order of the board of directors, shall, upon a written or printed petition of five or more heads of families of their respective districts, call a meeting of the voters of such district at some convenient place by posting written or printed notices in like manner as is provided for calling annual school district elections: Provided, That such election shall not be called until said clerks shall have severally submitted in writing a statement of the proposed union of such districts together with the question of the advisability of the formation of such union school district to the county superintendent of schools, who shall within fifteen days report in writing to the said clerks his approval or disapproval, his action to be based upon an investigation made by him to determine whether or not the educational and other conditions of the districts desiring to so unite are such as to insure the maintenance of a high school in fact according to the provisions of this article. If the county superintendent shall approve of the formation of the proposed union high school district, and if a majority of the voters of each district shall vote to unite for the purposes herein stated, the clerk of each district so proposing to unite shall, within ten days after the election notify the county superintendent of the holding of and the result of the election, and the county superintendent shall, immediately after the receipt of said notices, designate such union high school district as "Union High School District No. —, — County," and shall so notify the clerks of the several districts so uniting. The boards of directors of the several districts so voting to unite shall constitute the board of directors of such union high school district, and shall within ten days after the elections at which the districts voted to unite meet and organize by electing one of their number president of the board, and selecting their clerk for such union high school district, and the clerk and president chosen at such meeting shall hold their respective offices until the next annual school district election and until their successors and [are] elected and qualified; and the election of president and clerk shall occur annually thereafter, on the second Saturday next succeeding the date at which the newly elected school district officers shall enter upon the discharge of their duties: Provided, That in union districts consisting of three or more school districts the board of directors of said union district shall be composed of the chairman of the several boards of directors of the districts comprised in such union district. The clerk of the union high school district shall within ten days after the organization of the district, by the election of a president and clerk, notify the county superintendent of the organization of said district, and the county superintendent shall also, within ten days after receiving notice of the organization of the district, notify the county treasurer and county auditor of the fact of its organization, together with the numbers

of the constituent districts and the names of the directors and clerk. In case any resident taxpayer shall feel aggrieved at the formation of a union high school district, or at the refusal of the county superintendent to approve of its formation, he shall be entitled to an appeal as provided in section four of the act of which this section is amendatory. The provisions of this section shall not apply to any school district that is already maintaining a high school or that is capable of maintaining a high school without uniting with another district, or with other districts, these facts to be determined by the county superintendent, or, in case of an appeal, by the county commissioners: Provided, That after such union or graded district shall be formed, and the residents of said union or graded district and of any other school district or districts desire to unite for the purpose of enlarging said union or graded district the clerk of said union or graded school district and the clerk or clerks of the district or districts desiring to unite thereto, shall, upon the petition of five or more heads of families of their respective districts call an election of the voters of such districts at the schoolhouses in their respective districts by posting written or printed notices in like manner, as is provided for calling annual school district elections, and if a majority of the voters voting at such election vote to unite for the purposes therein stated, then the said union or graded district shall be enlarged by the addition of such other district or districts, and the board of directors of the said union or graded district shall be enlarged by the addition of the chairman of the board of directors of such additional district or districts: Provided, further, That if local conditions admit of it the directors of any union district may at their discretion admit pupils residing in such union district belonging to a grade lower than the high school grades, but no pupil belonging to a lower grade than the seventh shall ever be admitted to any such high school: Provided, further, That the course of study for such grade or grades shall not be inconsistent with the laws of this state, and shall be such as shall be approved by the superintendent of public instruction. [Amended by act 1901; L. 1901, p. 371; amendment, approved Mar. 14, 1903; L. 1903, p. 159.]

§ 2281. Powers of Union District Board.

The board of directors and clerk provided for in the preceding section, shall, in all matters relating to the union high schools of such district, possess all the powers herein provided for other school district officers, including the power to levy special taxes for the purpose of furnishing transportation to and from school and other additional school facilities for the union district, or for the payment of teachers' wages, or for the purchase of fuel, supplies, globes, maps, charts, books of reference or other appliances for teaching, or for any or all of these purposes. They shall discharge all the duties and be governed by the laws herein provided for school district officers. Such union high school district shall be entitled to and shall receive apportionments from the state annual school fund in the manner provided by law for the apportionments from the state annual fund to other school districts: Provided, That the superintendent of public instruction shall apportion annually to each union district the sum of one hundred (\$100) dollars for each grade above the grammar grades main-

tained in such schools; but no union high school district shall be entitled to any apportionment of state school funds, that has not maintained a high school in fact, at least six months during the last preceding school year, as shown by the last annual report of the county superintendent on file in the office of the superintendent of public instruction: Provided, further, That a high school grade shall consist of not fewer than four pupils who have completed the work of the preceding grades to the satisfaction of the county superintendent, and no high school grade which shall have consisted of fewer than four such pupils, or which shall have had an average daily attendance during the school year, of fewer than three pupils, shall be entitled to the bonus of the one hundred dollars (\$100) mentioned in this section. [Amended by act 1899; L. 1899, p. 306; amended by act 1901; L. 1901, p. 371; amendment approved Mar. 14, 1903, L. 1903, p. 161.]

§ 2282. Course of Study.

The directors of such union districts shall determine what grade or grades above the grammar grade of the state common school course of study shall be pursued and maintained in such schools: Provided, That the course of study for all high school grades shall not be inconsistent with the laws of this state; and shall be such as the superintendent of public instruction shall approve. If local conditions admit of it the directors of any union high school district may, at their discretion, admit pupils residing in such union district, belonging to a grade lower than the high school grades, but no pupil belonging to a grade lower than the seventh shall ever be admitted to any such union high school. The teacher or teachers of such union high schools shall keep such records and make such reports as are required of teachers in the districts composing such union districts, and shall make such other reports as may be required by the superintendent of public instruction. [Amended by act of 1899; L. 1899, p. 307; amendment approved Mar. 14, 1903; L. 1903, p. 162.]

§ 2283. Organization of Consolidated Districts.

Upon receipt of a petition signed by five heads of families of two or more adjoining districts now or hereafter organized, the county superintendent may organize and establish a consolidated district in the same manner as provided for in a change of territory to another district. When two or more school districts are consolidated by the provisions of this act, or where two or more districts are consolidated by the uniting of two or more incorporated cities or towns, as provided by law, all the directors of the several districts so consolidated shall constitute the board of directors of the new district so formed, and shall have all the powers and authority conferred by the laws of this state upon school district officers, until the next annual school election in said district, at which time there shall be elected three directors for said district, in the manner provided by law, who shall hold their respective offices as provided for the officers of new districts; and the county superintendent of any county in which new districts are formed by the uniting of two or more districts, or by the incorporating of any city or town lying partly in two or more school districts, shall upon being notified of such action by the board of directors of such new district.

proceed to designate such new district by a number not the same as that of either component district or of any existing district, and to make a record of the boundaries thereof, and he shall certify such facts to the board of county commissioners, to the county treasurer, and to the clerk of the new district formed. [Amendment, approved Mar. 14, 1903; L. 1903, p. 162.].

§ 2284. Property of Consolidated Districts.

All school districts formed by the uniting of two or more districts, as provided for in this act, shall be entitled to the funds and other public property of the other school districts so united, and the county superintendent shall apportion all funds to the new district in accordance with this provision and shall certify such apportionment to the county treasurer: Provided, That for the purpose of apportionment the consolidated district shall be credited with two thousand days' attendance in addition to actual attendance. [Amendment, approved Mar. 14, 1903; L. 1903, p. 163.]

§ 2286. Organization of Board of Directors.

When two or more school districts shall be united by the provisions of this act, the boards of directors of the several districts shall, within thirty days thereafter, meet and organize the new board by the election of one of their number as president of the board. They shall elect one of their number as clerk for said district and the clerks of the several districts so united shall deliver to said clerk all books, papers and records belonging to their respective offices. The clerk of the new district thus formed shall immediately notify the county superintendent of the organization of the new district. [Amendment, approved Mar. 14, 1903; L. 1903, p. 163.]

§ 2288. Joint Districts—How Formed.

For the purpose of forming such joint districts, a petition shall be presented, drawn and signed as prescribed for the formation of other school districts, and a copy of such petition shall be presented to the county superintendent of each county affected by the formation of such proposed joint district. The superintendents of all counties affected by the formation of the proposed joint district shall confer and shall mutually agree upon the time and place of investigating said petition, and upon such agreement each shall notify the school electors of the district or districts of his county affected by the formation of the proposed joint district, by posting notices as required in the formation of other school districts, one of which notices shall be posted upon the schoolhouse door of each district affected by the formation of the proposed joint district, and one of which shall be posted in some conspicuous place in the territory which it is proposed to include in the proposed joint district, in each county; and at the time and place mentioned in said notices the several superintendents shall meet and jointly investigate all matters pertaining to the formation of the proposed joint district; and, if upon such investigation they shall mutually agree that said district should be formed, they shall make an order forming said joint district, and they shall post or cause to be posted, notices calling a special election to be held in such joint district, at some convenient place, and

shall also describe in said notices, the boundaries of the joint district so formed. Said notices shall be signed by all the county superintendents whose counties are affected by the formation of said joint school district. The notices calling such election shall be posted as in the case of other special elections, and the officers elected at such special election shall qualify within ten days after their election. The officers elected at such special election shall serve only until the next regular annual election, when a full set of officers shall be elected as provided in the case of other new districts. Every director or clerk of the joint district shall file his certificate of election and oath of office with the county superintendent of each county in which any portion of his district lies, and he shall file his signature as required by law, in the office of the county treasurer of each of such counties. Vacancies in the office of director or clerk of a joint district shall be filled by appointment by the county superintendent in whose county the officer vacating resided while serving, and a copy of such appointment, with the oath indorsed thereon, shall be filed in the office of each county superintendent. After a joint school district has been formed, all transfers of territory to and from said district shall be made by mutual agreement and joint action between the county superintendents of the several counties in which the territory of said joint district shall be embraced, and all notices of such transfers shall be signed by all superintendents in whose counties the territory of the joint district shall lie. The superintendents of the several counties affected by the formation of any joint school district shall make and keep a correct transcript of the entire boundary of such district, and shall certify the same to the county treasurer and county auditor of each county and all transfers of territory to or from such joint district shall likewise be certified to such officers, said certificates being signed by all county superintendents in whose counties any part of the territory of such joint district shall be located. A map of all joint districts existing at the time this section shall take effect shall be filed with the superintendent of public instruction within thirty days after this section shall take effect, and a map of all joint districts formed under the provisions of this section shall be filed with the superintendent of public instruction within thirty days after the formation of such districts. Said maps shall indicate the number by which the district is designated in each county, and it shall also show the location of the schoolhouse in such district, if there be one. Said map shall be certified to by all county superintendents in whose counties any part of such joint district shall be embraced. [Amendment, approved Mar. 14, 1903; L. 1903, p. 164.]

§ 2289. Reports from Joint Districts.

All reports from joint districts shall be made in full to the county superintendent of each county affected thereby; Provided, That any county superintendent may order the segregation of any items of such report so as to show separately the number or amounts from each county affected thereby: Provided, further, That for the purpose of the apportionment of state school funds the district shall be considered as belonging to the county in which the school building is located. And, provided, further, That the portion of a joint district lying in

a county in which the schoolhouse is not located shall receive its portion of the county funds based on the number of days' attendance of such children at said joint district school. [Amendment, approved Mar. 14, 1903; L. 1903, p. 165.]

§ 2293. Powers and Duties of State Superintendent.

The powers and duties of the superintendent of public instruction shall be:

First. To have supervision over all matters pertaining to the public schools of the state.

Second. To report biennially to the governor on or before the first day of November preceding the regular session of the legislature, of which report four thousand copies shall be printed and delivered to the superintendent of public instruction, who shall furnish two copies to be deposited in the state library, one copy to each county superintendent of schools and one copy to each district library. Said report shall contain a statement of the general condition of the public schools of the state, with full statistical tables by counties showing the number of schools and the attendance; the state and county funds apportioned, amount received from special tax and from other sources, amount expended for salaries of teachers, the salaries paid by the several counties to the county superintendent of schools and the amount paid him for incidentals and expenses; the amount paid for building and providing schoolhouses, furniture and apparatus, the amount of bonded or other school indebtedness, with the rate of interest paid thereon, the report of all state educational institutions, or such portions of them as he may think advisable, together with such other facts as he may deem of general interest. He shall also include in his report a statement of plans for the management and improvement of the schools.

Third. To prepare and have printed such blanks, forms, registers, courses of study, rules and regulations for the government of the common schools, questions prepared for the examination of teachers, and such other blanks and books as may be necessary for the discharge of the duties of teachers and officers charged with the administration of the laws relating to the common schools, and to distribute the same to the county superintendents.

Fourth. To travel in the different counties of the state where public schools are taught, without neglecting his other official duties as superintendent of public instruction, for the purpose of visiting schools, of consulting the county superintendents, and of addressing public assemblages on subjects pertaining to public schools; also to conduct such correspondence as may enable him to obtain all necessary information relating to the system of public schools in other states.

Fifth. To submit to the state auditor a monthly statement of his expenditures for traveling expenses: Provided, That said expenditures shall not exceed eight hundred dollars in one year.

Sixth. To cause to be printed with an appendix of appropriate forms and instructions for carrying into execution the laws relating to public schools, and to distribute to each county superintendent a sufficient number of copies to supply each district officer, and to cause the same to be printed and distributed as often as any change in the laws make it of sufficient importance, in his opinion, to justify the same.

Seventh. To act as ex-officio president of the state board of education.

Eighth. To hold, on or before the first day of October, annually, a convention of the county superintendents of the state at such time and place as he may deem convenient, for the discussion of questions pertaining to supervision and the administration of the school laws and such other subjects affecting the welfare and interests of the common schools as may be brought before it. Said convention to continue in session not less than two days nor more than three days at the option of the superintendent of public instruction. It shall be the duty of every county superintendent in this state to attend said convention during its entire session, and any county superintendent who attends less than the full time the convention shall be in session shall receive mileage as allowed by law, only in the ratio that the time he actually attends shall bear to the whole time the convention shall be in session. No mileage shall be paid to any county superintendent for attendance at such convention except upon a certificate of the superintendent of public instruction, stating the full time the convention was in session and the actual time said county superintendent was in attendance.

Ninth. Upon receipt from the state auditor of a certificate, of the state school fund subject to apportionment, to apportion within ten days the said fund among the several counties of the state, in proportion to the total days' attendance: Provided, That each school district shall be credited with at least two thousand days' attendance. The basis of said apportionment shall be the last annual reports of the several county superintendents on file in his office at the time of making the apportionment: Provided, further, If a pupil attends any public school of the state, outside of his resident district, or any private school within his resident district up to the ninth grade during the time the resident district maintains a school of the grade in which the pupil belongs, the attendance shall be credited to the district in which the pupil resides, unless mutually arranged otherwise by the directors; and the clerk of any district whose resident pupils are attending school in another district, shall notify the clerk of the district where such pupils attend when the school of said pupil's resident district will be in session, and of the grades that will be maintained; and without such notice all claims to attendance will be forfeited.

Tenth. To acquire annually, on or before the 15th day of August, of the president, manager, or principal of every seminary, academy or private school, and of the president, manager or principal of every state educational institution in this state, a report of such facts arranged in such form as he may prescribe, and he shall furnish blanks for such reports; and it is hereby made the duty of every president, manager or principal, to fill up and return such blanks within such time as the superintendent of public instruction shall direct.

Eleventh. To keep in his office a directory of all boards of regents and trustees of state educational institutions, of the faculties of said institutions, and of all teachers receiving certificates to teach in the common schools of this state.

Twelfth. To issue common school certificates as provided by law.

Thirteenth. To keep in his office, at the capital of the state, all books and papers pertaining to the business of his office, and to keep and preserve in his

office a complete record of statistics, and all matters pertaining to the educational interests of the state, as well as a record of the meeting of the state board of education. He shall file all papers, reports and public documents transmitted to him by the school officers of the several counties of the state each year; separately. Copies of all papers filed in his office, and his official acts, may be certified by him and attested by his official seal, and when so certified shall be evidence equally and in like manner as the original paper.

Fourteenth. To decide all points of law which may be submitted to him in writing by any county superintendent, or that may be submitted to him by any other person, upon appeal from the decision of any county superintendent; and he shall publish his rulings and decisions from time to time for the information of school officers and teachers; and his decisions shall be final unless set aside by a court of competent jurisdiction.

Fifteenth. To deliver over to his successor, at the expiration of his term of office, all records, books, maps, documents and papers of whatever kind belonging to his office or which may have been received by him for the use of his office. [Amended, act 1899; L. 1899, p. 307; amended, act 1901; L. 1901, p. 41; amended, act 1901; L. 1901, p. 373; amendment, approved Mar. 14, 1903; L. 1903, p. 166.]

§ 2293. State school fund—Certification of.—The fact that the school fund of a county is indebted to the state on account of taxes levied and collected does not justify the state auditor in deducting any portion of such indebtedness from the amount of the warrant he is required by law to draw in favor of the school fund of any county, when the superintendent of

public instruction has apportioned the state school fund to the respective counties and reported same to the state auditor, with direction to issue warrants to the treasurers of the various counties for the respective amounts due them thereunder: State ex rel. Tanner v. Cheetham, 23 Wash. 666, 63 Pac. 552.

§ 2294. State Superintendent may Employ Stenographer, etc.

The superintendent of public instruction is hereby authorized to appoint a stenographer and a deputy superintendent of public instruction, and also to employ such other assistance as the needs of his office shall require from time to time, and for the payment of whose services appropriations shall have been made by the legislature of this state. [Amendment, approved Mar. 14, 1903; L. 1903, p. 169.]

§ 2295. State Board of Education—Appointment of.

The governor shall appoint, by and with the advice and consent of the state senate four suitable persons holding life diplomas issued by authority of this state, who, together with the superintendent of public instruction, shall constitute the state board of education: Provided, That at least two members of said board shall be selected from those actually engaged in teaching in the common schools of the state. The persons appointed members of the state board of education shall hold their office for two years from the first Monday in March next following their appointment, and shall serve until their successors are appointed and qualified. [Amendment, approved Mar. 19, 1901; L. 1901, p. 376.]

§ 2296. Meeting.

The state board of education shall hold an annual meeting at the capital of the state on the third Tuesday of June of each year, and may hold such special meetings as may be deemed necessary for the transaction of public business, such special meetings to be called by the superintendent of public instruction. The persons appointed as members of the board of education shall be paid for their services five dollars per day and the actual expenses incurred in the performance of their duties, which expenses shall be paid by the state treasurer on warrants of the state auditor, out of funds not otherwise appropriated, upon the certificate of the superintendent of public instruction: Provided, That the expenses of the whole board shall not exceed the sum of one thousand dollars in any one year. [Amendment, approved Mar. 14, 1903; L. 1903, p. 169.]

§ 2298. Powers and Duties of.

The state board of education shall have power, and it shall be its duty;

First. To prepare and outline course or courses of study for the primary, grammar and high school departments of the common schools, and to prescribe such rules for the general government of the common schools as shall secure regularity of attendance, prevent truancy, secure efficiency and promote the true interests of the common schools.

Second. To use a common seal, and to elect one of its own members as secretary, who shall keep a correct record of all proceedings of the board, and shall file a certified copy of the same in the office of the superintendent of public instruction.

Third. To sit as a board of examination at the annual or special meetings, and to grant state certificates and life diplomas, in accordance with the provisions in this act, or the act of which this act is amendatory.

Fourth. To prepare a uniform series of questions to be used by the county superintendents in the examination of teachers, and to determine rules and regulations for conducting the same.

Fifth. To thoroughly investigate and ascertain the character, thoroughness and comprehensiveness of the work required to be performed as a condition of entrance to and graduation from the various courses of all schools of the character contemplated in sections one hundred and thirty-eight (138), one hundred and thirty-nine (139), and one hundred and forty-one (141), of the act of which this act is amendatory, before granting or authorizing to be granted to the holder of a diploma of any institution of learning situated outside of this state, and to make a list of such institutions of learning as they shall find to be entitled to recognition according to the letter and spirit of the aforesaid sections mentioned in this subdivision. It shall also carefully investigate and ascertain the character, thoroughness and comprehensiveness of the examinations required to be taken, in order to obtain state certificates and life diplomas contemplated in sections one hundred and thirty-eight (138) and one hundred and forty-one (141) of the act of which this act is amendatory; and said board shall make a list of the certificates and diplomas that are found to be equal in

all respects to the state certificates and life diplomas authorized to be issued in this state. Such list shall be entitled "List of Accredited Schools," or "List of Accredited Certificates and Diplomas," as the case may be, and no certificate or diploma shall be granted in this state without examination, except to the holder of a certificate or diploma mentioned in one or both of the accredited lists mentioned in this subdivision. [Amendment, approved Mar. 14, 1903; L. 1903, p. 170.]

§ 2301. County Superintendent—Election—Term—Vacancy.

A county superintendent of common schools shall be elected in each county of the state at each general election, whose term of office shall begin on the first Monday in September next succeeding his election and continue for two years until his successor is elected and qualified. He shall take the oath of affirmation of office and shall give an official bond in a sum to be fixed by the board of county commissioners. He may appoint a deputy who shall qualify in the same manner as the county superintendent, and perform the duties of the office, subject, however, to revision by the county superintendent: Provided, That in any county having more than one hundred school districts, the county superintendent may appoint such clerical assistance as may be necessary to perform the work of his office properly. The county commissioners of each county shall fill any vacancy that may occur in the office of county superintendent until the next general election. [Amended by act of 1899; L. 1899, p. 311; amendment, approved Mar. 14, 1903; L. 1903, p. 171.]

§ 2304. Powers and Duties of County Superintendent.

Each county superintendent shall have the power and it shall be his duty,

First. To exercise a careful supervision over the common schools of his county, and to see that all the provisions of the common school laws are observed and followed by the teachers and school officers.

Second. To visit each school in his county not less than once each year.

Third. To distribute promptly all reports, laws, forms, circulars, and instructions which he may receive for the use of the schools and the teachers.

Fourth. To enforce the outline course of study adopted by the state board of education, or the course of study adopted by any other lawful authority, and to enforce the rules and regulations required in the examination of teachers.

Fifth. To keep on file and preserve in his office the biennial reports of the superintendent of public instruction and of the county superintendent of his county.

Sixth. To keep in good and well bound books, to be furnished by the county commissioners, records of his official acts.

Seventh. To preserve carefully all reports of school officers and teachers, and at the close of his term of office to deliver to his successor all records, books, documents and papers belonging to the office, taking a receipt for the same, which shall be filed in the office of the county auditor.

Eighth. To administer oaths and affirmations to school directors, teachers and other persons, on all official matters connected with or relating to schools, but he shall not make or collect any charge or fee for so doing.

Ninth. To keep in a suitable book an official record of all persons under contract to teach in the schools of his county, showing the number of the school district, the date of the contract, the names of the contracting parties, the date of the expiration of the teacher's certificate and the grade thereof, the salary paid, and the date of commencing school, with the length of the term in weeks.

Tenth. To make an annual report to the superintendent of public instruction on the first day of August of each year, for the school year ending June 30, next preceding. The report shall contain an abstract of the reports made to him by the district clerks, and such other matters as the superintendent of public instruction shall direct. And it shall be the duty of the county commissioners and county auditor in every county wherein the county superintendent is about to retire from office, to withhold the warrant for his salary for the month of July until they shall have received a certificate from the superintendent of public instruction that the annual report of such county superintendent has been [made] in a satisfactory manner; and it shall be the duty of the superintendent of public instruction to transmit such certificate to the auditor immediately upon receiving such satisfactory report.

Eleventh. To keep in his office a full and correct transcript of the boundaries of each school district in the county, including joint districts. In case the boundaries of said districts are conflicting or incorrectly described, he shall change, harmonize and describe them, and at their next regular meeting he shall certify his action to the county commissioners of his county, and shall file with them a complete transcript of the boundaries of all school districts affected by his action, which shall be entered upon the journal of said board and become a part of their records. The county superintendent shall, on request, furnish the district clerks with descriptions of the boundaries of their respective districts.

Twelfth. To appoint school district officers to fill vacancies caused by death, resignation, failure to hold election, failure to qualify before the day for taking office, and absence from the district for a period of ninety days; to appoint school officers for any new districts: Provided, That when any new district is organized, such of the school officers of the old district as reside within the limits of the new one shall be such school officers of the new one, and the vacancies in the old district shall be filled by appointment.

Thirteenth. To apportion within ten days after receiving the certificate of apportionment of the superintendent of public instruction, the state annual school funds as are subject to apportionment to the several districts entitled to receive the same in accordance with the instructions of the superintendent of public instruction. He shall certify the result of the apportionment to the county treasurer, and also notify each clerk of the amount apportioned to that district.

Fourteenth. To grant such temporary and special certificates and to conduct such examinations of teachers and make such records thereof as may be

prescribed by law: Provided, That he shall give ten days' notice of such examination by publication in some newspaper of general circulation published in his county, or if there be no newspaper, then by posting up hand bills, or otherwise.

Fifteenth. To hold teachers' institutes according to law, and to conduct such other meetings of the teachers of his county as may be for the best interests of the schools.

Sixteenth. Any county superintendent shall have power to suspend any teacher who may be teaching in his county, whom he shall find to be immoral, and in case of such suspension he shall immediately notify the superintendent of public instruction of his action, and shall clearly and fully state his reasons for said action. The superintendent of public instruction shall proceed within fifteen days to investigate the charges against such teacher, and if he shall find them to be justified by the facts, he shall immediately revoke the certificate of said teacher: Provided, That he shall refer the question of revocation to the state board of education in all cases in which such teacher holds a state certificate or life diploma.

Seventeenth. To collect the cost of registers and clerk's record books from all districts obtaining the same, and at the end of each quarter of the fiscal year to turn over to the treasurer of his county all moneys derived from the same [sale] of such books, together with a detailed statement of the sources from which said funds were derived. He shall also at the same time send a copy of said statement to the superintendent of public instruction. The county treasurer shall remit all moneys derived from such sources to the state treasurer, as other moneys are required to be remitted, and the state treasurer shall place such moneys to the credit of the general fund of the state. [Amended by act of 1899; L. 1899, p. 311; amendment, approved Mar. 14, 1903; L. 1903, p. 171.]

§ 2304. **Education — Superintendent, county.**—A temporary certificate to teach, granted by the county superintendent of schools, under the authority of the General Statutes, section 777, cannot be collaterally attacked in an action brought by a teacher against a school district for breach of contract of employment to teach its school, when there is no allegation of fraud or collusion in obtaining the certificate: *Kimball v. School District*, 23 Wash. 520, 63 Pac. 213.

§ 2308. County Superintendent Furnished Office by County.

The county commissioners shall provide the county superintendent with a suitable office at the county seat, and all necessary blanks, books, stationery, postage, printing and other expenses of his office shall be paid by the county treasurer out of the county fund upon a sworn statement made quarterly and allowed by the county commissioners: Provided, That, as to the necessity for the printing and issuance of circulars of information pertaining to the schools of his county, for the use of schools, school officers and teachers, the county superintendent shall determine. [Amendment, approved Mar. 19, 1901; L. 1901, p. 376.]

§ 2309. Salary and Mileage of County Superintendent.

For each mile actually and necessarily traveled in the performance of their official duties and in attendance on the convention of county superintendents, called by the superintendent of public instruction, county superintendents shall

be allowed ten (10) cents per mile: Provided, That no county superintendent shall be allowed to charge or collect any fee for the performance of any other duties therein made: Provided, further, That no constructive mileage shall be charged. [Amended by act of 1901; L. 1901, p. 377; amendment, approved Mar. 14, 1903; L. 1903, p. 174.]

§ 2310. Election of Directors—Term of Office.

Directors of school districts shall be elected at the regular annual school election. At the first annual school election in all new districts, three directors shall be elected for one, two and three years respectively. No person shall be eligible to the office of school director who is not able to read and write the English language. The ballot shall specify the term for which each is to be elected. In all districts in which elections have been previously held, one director shall be elected for the term of three years, and if vacancies are to be filled, a sufficient number to fill them for the unexpired term or terms; and the ballot shall specify the respective term for which each director is to be elected. Directors elect shall take office on the fourth Monday next succeeding their election, and they shall meet within ten days thereafter and shall organize by electing one of their number as chairman and another as clerk. The chairman of the board shall enter upon the discharge of his duties as chairman immediately after his election as such chairman; and the clerk shall enter upon the discharge of his duties as clerk on the first Monday in August each year, and shall serve as such clerk for a period of one year: Provided, That if any school district clerk elected in the manner provided for in this act shall fail to discharge his duties in accordance with law, the board of directors may at any time remove such clerk and elect another of their number as clerk to fill the unexpired term of the clerk so removed. The school district clerk shall within ten days after the election of the chairman and clerk, or within ten days after any change in the office of chairman or clerk inform the county superintendent of such change. In case of a vacancy in the board of directors from any cause, the county superintendent shall fill such vacancy by appointment until the next annual election. [Amended by act of 1899; L. 1899, p. 313; amended by act of 1901; L. 1901, p. 377; amended by act of 1901; L. 1901, p. 451; amendment, approved Mar. 14, 1903; L. 1903, p. 175.]

§ 2311. Powers and Duties of Directors.

Every board of directors, unless otherwise specially provided by law, shall have power and it shall be their duty:

First. To employ, and for sufficient cause, to discharge teachers, mechanics or laborers, and to fix, alter, allow and order paid their salaries and compensation. The directors shall make with each teacher employed by them a written or printed contract, which shall be in conformity with the laws of this state. Every such contract shall be made in duplicate, one copy of which shall be retained by the school district clerk and the other shall be delivered to the teacher after having been approved and registered by the county superintendent as by law required: Provided, That no board of directors shall employ any teacher or teachers whose term or terms of service begin after the first Monday in August,

until after the directors elected at the annual school election in said year shall have entered upon the discharge of their duties: Provided, further, That this subsection shall not apply to school districts having a population of ten thousand (10,000) or more inhabitants.

Second. To enforce the rules and regulations prescribed by the superintendent of public instruction and the state board of education for the government of schools, pupils and teachers and to enforce the course of study lawfully prescribed for the schools of their district.

Third. To provide and pay for such materials, supplies and libraries, as may be necessary for the schools, and to purchase such maps, charts and other apparatus as may have the written approval of the county school superintendent.

Fourth. To rent, repair, furnish and insure schoolhouses.

Fifth. To build or remove schoolhouses, purchase or sell lots or other real estate when directed by a vote of the district to do so: Provided, That a schoolhouse already built shall not be removed, nor a new site for a schoolhouse be designated except when directed by a two-thirds vote of the electors of such district at an election to be held for that purpose, which election may be a special or general school election.

Sixth. To purchase property in the name of the district and to receive, lease and hold for their district any real or personal property.

Seventh. To suspend or expel pupils from school who refuse to obey the rules thereof, and they shall exclude from school all children under six years of age.

Eighth. To provide free text-books and supplies to be loaned to the pupils of the schools, when in their judgment the best interest of their district will be subserved thereby, and to prescribe such rules and regulations as they shall deem necessary to preserve such books and supplies from unnecessary damage.

Ninth. To require all pupils to be furnished with such books as may have been adopted by the state board of education or by any other lawful authority of this state, as a condition to membership in the schools.

Tenth. To exclude from schools and school libraries all books, tracts, papers and other publications of an immoral or pernicious tendency or of a sectarian or partisan character.

Eleventh. To authorize the schoolroom to be used for summer or night schools, literary, scientific, religious, political, mechanical or agricultural societies, under such regulations as the board of directors may adopt.

Twelfth. To provide and pay for transportation of children to and from school when in their judgment the best interests of their district will be subserved thereby. [Amended by act of 1901; L. 1901, p. 45; amended by act of 1901; L. 1901, p. 378; amendment, approved Mar. 14, 1903; L. 1903, p. 175.]

§ 2311. **Employment of teacher.**—A school district may make a valid contract for the employment of a teacher for the succeeding year: *Taylor v. School District No. 7, Clallam Co., 16 Wash. 365, 47 Pac. 758.*

§ 2313. **Nonresident Pupils.**

Any board of directors shall have power to make arrangements with adults wishing to attend school or with the directors of another district for the at-

tendance of such children in the school of either district as may be best accommodated therein: Provided, That in case such arrangements are not made, or children from school districts not adjoining desire to attend school in their district, they may charge reasonable tuition for such attendance: Provided, further, That all moneys collected by any school district officer for the use of the district shall, within thirty days after the date of its collection, be turned over to the county treasurer and placed to the credit of the district. [Amendment, approved Mar. 9, 1899; L. 1899, p. 314.]

§ 2316. Directors not to be Interested in Contracts of.

It shall be unlawful for any director to have any pecuniary interest, either directly or indirectly, in any erection of schoolhouses, or for warming, ventilating, furnishing or repairing the same, or to be in any manner connected with the furnishing of supplies for the maintenance of schools, or to receive or accept any compensation or reward for services rendered as director: Provided, That nothing in this section shall be construed to prevent the director elected as clerk from acting as purchasing agent for his district, or from receiving such compensation for performing the duties of school district clerk as are now or as may hereafter be provided by law. [Amendment, approved Mar. 14, 1903; L. 1903, p. 177.]

§ 2317. Limit of indebtedness.—Where it appears that the indebtedness of a school district exceeds the limitation allowed by the constitution, the directors of the district cannot be compelled to open and maintain a public school: *Stanley v. McGeorge*, 17 Wash. 8, 48 Pac. 736.

§ 2319. District Clerk—Election—Term—Vacancy, how Filled.

Immediately upon assembling on the fourth Monday next succeeding their election the directors shall elect one of their number as clerk who shall serve one year and until his successor is elected, or until he shall be removed for cause by the board of directors. Said clerk shall enter upon the duties of his office on the first Monday in August each year: Provided, That any clerk elected to fill a vacancy caused by the removal of his predecessor or otherwise, shall enter upon the discharge of his duties immediately after his election. Every school district clerk shall within ten days after any change in the office of chairman or clerk, notify the county superintendent of such change in the organization of the board. [Amended by act of 1899; L. 1899, p. 315; amendment, approved Mar. 14, 1903; L. 1903, p. 177.]

§ 2320. Powers and Duties of Clerk.

The duties of the district clerk shall be as follows: First. To attend all meetings of the board of directors; but if he shall not be present the board of directors shall select one of their number to act as clerk, who shall certify the proceedings of the meeting to the clerk of the district, to be recorded by him. He shall keep his records in a book to be furnished by the board of directors, and he shall preserve copies of all reports made to the county superintendent, and safely preserve and keep all books and documents belonging to his office, and shall turn the same over to his successor. Second. To keep accurate and

detailed accounts of all receipts and expenditures of school money. At each annual school meeting the district clerk must present his record book for public inspection, and shall make a statement of the financial condition of the district and of the action of the directors, and such record must always be open for public inspection. Third. To take annually, in June of each year, an exact census of all children and youth between the ages of five and twenty-one years who were bona fide residents of the district on the first day of June of that year; and he shall designate the number of weeks each child between the ages of six and twenty-one years has attended school during the school year; the names and sex of all children subject to enumeration, together with the names of their parents or guardians: Provided, That Indian children not living under the guardianship of white persons, or who have not severed their tribal relations, or Mongolian children not native born, shall not be included in said census. He shall note all defective youth between the ages of five and twenty-one years; and he shall, on or before the fifteenth day of July, make to the county superintendent a full and complete report of all children enumerated, together with a complete statistical report of the affairs of his district, which report shall be verified by affidavit. Said report shall be made upon blanks to be furnished by the superintendent of public instruction, and shall contain such items of information as said superintendent shall require, including the following: The names of all persons, male and female, between the ages of five and twenty-one years, residing in the district on the first day of June last past, together with the number of weeks each has attended school during the last school year; the names and residences of the parents or guardians of all such children; the number of schools or departments taught during the year, and the branches taught; the number of children, male and female, enrolled in school, and the average daily attendance; the number of teachers employed, and their compensation per month; the number of days school was taught during the past school year, and by whom; the text-books used, and the number of volumes, if any, in the school district library; the aggregate amount paid teachers during the year; the number of schoolhouses in the district, and the value of them; the aggregate value of all school furniture and apparatus belonging to the district; the amount raised by special tax during the year for the support of schools, and for buildings, sites and furniture; the amount raised by subscription, or by other means than taxation; the amount of bonded indebtedness of the district, and the rate of interest paid; the amount of all other indebtedness, and such other items as the superintendent of public instruction may deem of importance, and as may be provided for in the blanks furnished for said report, and the clerk shall keep on file a duplicate copy of said report. Fourth. To keep an accurate account of all expenses incurred by him in his district in keeping the schoolhouse in repair, in providing for necessary janitor work, and in providing school supplies and for other expenses incurred by him on account of the school, which accounts must be audited by the board of directors, and paid out of the district school fund. Fifth. To give the required notice of all annual or special elections; also, to give notice of the regular and special meetings of the board of

directors as herein authorized. Sixth. To report to the county superintendent at the beginning of each term of school the name of the teacher and the proposed length of the term, and to supply the teacher with the school register furnished by the superintendent of public instruction. Seventh. To issue and countersign all warrants ordered to be issued by the board of directors, and to report to the county treasurer on or before the first Monday of each calendar month all the warrants drawn by the directors of his district, giving date, number and fund on which each warrant is drawn. Eighth. To report to the county superintendent on or before the first day of December of each year the name and residence of every child that failed to attend school as required by law, and shall submit, at their next regular meeting, a duplicate of said report to the school board of his district. [Amendment, approved Mar. 9, 1899; L. 1899, p. 315.]

§ 2323. Reports of Teachers.

Every teacher who shall be teaching at the close of the school year, or who shall teach the last term of any school year, in any school district, shall make a report to the county superintendent immediately upon the close of such school year or term for the entire time taught in said school district since the beginning of the school year. Copies of all reports made by teachers shall be furnished to the clerk of the district, to be by him filed in his office. No board of directors shall draw any order or warrant for the salary of any teacher for the last month of his [or her] service, until the reports herein required shall have been made and received: Provided, That in all schools acting under the direction of a city superintendent the report of such superintendent shall be accepted by the county superintendent and the directors, in lieu of the teacher's reports, and that when there is no city superintendent, the report of the principal shall be accepted in lieu of the teacher's report. [Amendment, approved Mar. 14, 1903; L. 1903, p. 178.]

§ 2325. Teachers to Enforce Course of Study.

Teachers shall faithfully enforce in the schools the course of study and regulations prescribed, and shall furnish promptly all information relating to the schools which may be requested by the county superintendent. [Amendment, approved Mar. 9, 1899; L. 1899, p. 317.]

§ 2326. Public schools—Employment of teacher—Powers of board.—The board of directors of a school district have power to engage a teacher for the ensuing year, notwithstanding the fact that there would be a change in the membership of the

board before the time for the commencement of the term should arrive; and school directors are not authorized to annul the contract made by their predecessors: *Splaine v. School District*, 20 Wash. 74, 54 Pac. 766.

§ 2326a. Violation of Contracts by Teachers.

All teachers in the public schools of this state who shall willfully violate the terms of his or her contract for teaching by resigning his or her position as teacher without a written notice given to the school board at least thirty days before the time when the resignation shall take effect shall have his or her cer-

tificate revoked by the state school superintendent upon due notice from the school board, and shall be disqualified from teaching in the public schools of the state for the remainder of the school year: Provided, That sickness or other unavoidable circumstances which prevent the teacher from teaching one month shall be sufficient reason for the termination of the contract: And provided further, That a school board may release a teacher from a contract by mutual agreement. [Approved Mar. 16, 1901; L. 1901, p. 267.]

§ 2327. Legal Holidays—Teachers not Required to Work on.

No teacher shall be required to teach school on Saturdays, or on Thanksgiving day, Christmas, New Year's, or Fourth of July: Provided, That no deduction from the teacher's time or salary shall be made by reason of the fact that a school day happens to be one of the days referred to in this section as a day on which school shall not be taught. [Amended by act of 1899; L. 1899, p. 317; Amendment, approved Mar. 14, 1903; L. 1903, p. 178.]

§ 2336. School Year Defined—School Month.

A school day shall consist of six hours for all pupils above the primary grades, exclusive of an intermission at noon; but any board of directors may fix as a school day for their district a less number of hours than six: Provided, That for pupils belonging to the primary grades the school day shall not be less than four hours, exclusive of an intermission at noon, and for pupils belonging to grades above the primary grade the minimum school day shall not be less than five hours, exclusive of an intermission at noon. In the absence of any by-law or order of the board of directors defining the school day for their district, any teacher may dismiss all pupils belonging to the primary grades after an attendance of four hours, exclusive of said intermission. The school month shall consist of twenty days, or four weeks of five days each, and the term "school year," for all matters pertaining to experience in teaching and for all matters pertaining to the granting of or the renewing of certificates, shall consist of not fewer than nine school months. [Amendment, approved Mar. 14, 1903; L. 1903, p. 178.]

§ 2340. Minimum Term.

All school districts in this state shall maintain school during at least five months each year. All graded school districts in incorporated cities and towns shall maintain school during at least six months each year. [Amendment, approved Mar. 14, 1903; L. 1903, p. 179.]

§ 2341. Compulsory Attendance.

All parents, guardians and other persons in this state having or who may hereafter have immediate custody of any child or children between the ages of eight and fifteen years, shall send the same to school at least four months each year: Provided, That in graded school districts in incorporated cities and towns such children shall be sent to school at least six months in each year.

[Amended by act of 1901; L. 1901, p. 379; amendment, approved Mar. 14, 1903; L. 1903, p. 179.]

§ 2341a. Duties of Parents and Guardians, etc.

All parents, guardians and other persons in this state having or who may hereafter have immediate custody of any child or children between the ages of eight and fifteen years, shall send the same to a public or private school at least four months in each year: Provided, That at least three months of such child's or children's attendance shall be consecutive: Provided further, That in graded school districts in incorporated cities and towns, except such as are otherwise provided for by law, such children shall be sent to school at least five months in each school year: Provided further, That such child or children shall be excused from such attendance for the whole or any part of such period by the county superintendent of common schools upon being shown to the satisfaction of such county superintendent: (1) That such child's bodily or mental condition is such as to prevent his attendance at school or application to study for the period required; or (2), that such child is efficiently taught at home in such branches as are by law required to be taught in the schools of the district wherein such parents, guardians or other persons having such custody reside; or (3), that such child has already attained a reasonable proficiency in the branches or subjects required by law to be taught in the schools of such district during the first eight years as provided by the course of study adopted for and used in such district, or such part thereof as, in the judgment of the county superintendent, such child's age warrants him in requiring of such child; or (4), that, in case of a child under ten (10) years of age, there is not a school-house within two miles of the residence of such parents, guardian or other person having such charge.

Neglect a Misdemeanor—Penalty for.

Any parent or parents, guardian or other person having immediate custody of any child or children between the ages of eight and fifteen years, who shall, in any school year after June 30, 1903, willfully neglect or refuse to send such child or children to school as required by law, shall be deemed guilty of a misdemeanor, and upon complaint of any school district elector and conviction thereof in any court of competent jurisdiction shall be punished by a fine of not less than twenty dollars nor more than fifty dollars: Provided, That such fine when collected shall be paid to the county treasurer and by him placed to the credit of the school district wherein such parent or parents, guardian or other persons having such charge reside: Provided further, That no person prosecuted under this section shall be proceeded against for the same offense within the current school year under section six (6) of this act.

Report of Teachers.

At the end of the first month of school held in any school district after the beginning of the school year, it shall be the duty of the teacher of such school to report in writing to the clerk of such school district the name and ages of all children enrolled in and attending such school during said first month, together with the number of days attended by each child so enrolled.

Reports of Clerk.

Within ten days from and after the close of the first month of school, as provided in section three of this act, and at any time upon the written request of the county superintendent so to do, the school district clerk shall report in writing to the county superintendent of schools the names of the children between the ages of eight and fifteen years residing in such district who have not been enrolled in such school during said first month, or who are not in attendance, or have not attended, in such school as required by law at the time of making any such report requested by the county superintendent as herein provided.

Continued Neglect—Additional Penalty.

Upon receipt of the report of the district clerk mentioned in section two of this act and at any time after the close of the first month of school as herein provided upon the written report of the clerk of such district that any child is not attending or has not attended school as required by law, the county superintendent shall immediately notify the parents or guardians of such child, or other person having immediate custody of such child, that the law must be complied with, and request such parents, guardian or other person having such custody to show cause why such child should not attend school as required by law.

Notice to Parents.

Any parent, guardian or other person having immediate custody of any child between the ages of eight and fifteen years who, after being notified by the county superintendents as provided in section five of this act, shall further neglect or refuse to send such child to school, shall, upon complaint of the county superintendent, be summoned to appear with such child or children before the judge of the superior court to show cause why such child or children should not be placed in and attend school as required by law, and of [if] the said judge shall upon inquiry find that none of the conditions set forth in section one (1) of this act permitting a county superintendent to excuse such child from attendance, exist in the case of such child so appearing before him, he shall, in his discretion, issue either an order commanding such parent or parents or guardian to place such child in school, if school be then in session, or immediately when school shall resume, or appear before him and show cause for the neglect or refusal so to do; or an order requiring such parent or parents or guardian to execute and file in court a good and sufficient bond payable to the county superintendent of common schools, the condition of said bond being that the parent or parents or guardian shall send such child or children to school as required by law: Provided, That such bond shall be made in a sum not less than fifty dollars for each child complained of, and that upon the forfeiture and collection thereof the county superintendent shall pay the sum so collected to the county treasurer who shall place the same to the credit of the district wherein such parents or guardian reside: Provided further, That in case of the forfeiture of such bond, it is hereby made the duty of the county superintendent to institute such proceedings as shall be necessary to the collection of such obligation: Provided further, That no person proceeded against under this section

shall be prosecuted for the same offense within the current school year under section two (2) of this act.

Neglect of Teacher—Penalty for.

Any teacher, school district clerk or county superintendent of schools willfully neglecting or refusing to comply with the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof in any court of competent jurisdiction shall be fined in any sum not less than twenty dollars nor more than fifty dollars: Provided, That in the case of a teacher or district clerk such fine shall be paid to the county treasurer and by him placed to the credit of the school district of such teacher or district clerk, and in case a county superintendent be found guilty of such misdemeanor, such fine shall be paid to the county treasurer and by him placed to the credit of the general school fund of the county.

The county attorney shall act as attorney for the county superintendent in all court proceedings relating to the compulsory attendance of children as required by law.

All acts and parts of acts in conflict herewith are hereby repealed. [Approved Mar. 7, 1903; L. 1903, p. 55.]

§ 2341b. In Cities of Ten Thousand or More Inhabitants—Penalties, etc.

Every person residing in a city containing ten thousand or more inhabitants, having under his control a child between the ages of seven and fifteen years, shall annually cause such child to regularly attend some public day school at least six full school months, and for every neglect of such duty the person so offending shall be fined not exceeding twenty-five dollars: Provided, If the person so charged shall prove, or shall present a certificate made by or under the direction of the board of directors of the city wherein he resides, setting forth that the child has attended for the required time a private day school approved by the board of directors of the city wherein such school is located, or that the child has otherwise been furnished for a like period of time with the means of education, or has already attained a reasonable proficiency in the common branches of the first eight years as outlined in the course of study for the common schools of the state of Washington, or that his physical or mental condition was such as to render his attendance inexpedient or impracticable, or that the child, for satisfactory reasons, has been excused from attending school by the board of directors of the city in which he resides, then such penalty shall not be incurred.

Private Schools—Conditions for Approval of.

For the purpose of this act the board of directors of the several cities shall approve a private school only when the teaching therein is in the English language, and when they are satisfied that such teaching is thorough and efficient, and when the persons in charge of said school shall keep the record of attendance of the pupils thereof upon blanks provided by the state for such purpose, and shall render the board of directors of the city where such school is located a detailed report of the attendance of any pupil for any specified time: Provided,

That the request for such report be made in writing and sets forth that such pupil is suspected of irregular attendance.

Truant Officers—Appointment—Duties of.

The board of directors of each city shall annually appoint one or more special officers, and fix their compensation, who shall be truant officers and who shall, under the direction of the board of directors, inquire into all cases arising under the provisions of this act, or under any rules made in pursuance thereof, by the board of directors by which such officers were appointed, and such officers shall have power and authority in case of the violation of any of the provisions of this act to make complaint therefor to the superior court as hereinafter provided; they shall also serve all legal processes issued in pursuance of this act or of any such rules, but shall not be entitled to receive fees for such services.

Reports to Truant Officer.

The secretary of the board of directors of the several cities shall furnish the truant officers of their respective cities the names of all children between the ages of seven and fifteen which are found upon the census rolls for the current year and are not enrolled in any of the public day schools of the city. and it shall be the duty of the truant officers to ascertain in all cases why such children are not attending school and inquire into all cases of neglect of duty prescribed in section one of this act, and such truant officers, or any of them, shall when so directed by the board of directors, proceed with the necessary legal processes against any person liable to the penalty provided for in section one.

Employment of Children Under Fifteen Years of Age.

No child under the age of fifteen years shall be employed in any manufacturing, mechanical or mercantile establishment, or by any telegraph or telephone company in this state, except during the vacations of the public schools of the city in which such child resides, unless during the twelve months next preceding such employment, he shall have attended school as provided for in section one of this act, or has already attained a reasonable proficiency in the common school branches for the first eight years as outlined in the course of study for common schools of the state of Washington, or shall have been excused by the board of directors of the city in which such child resides; nor shall such employment continue unless such child shall attend school each year, or until he shall have acquired the elementary branches of learning taught in the public schools as above provided.

No child under the age of fifteen years shall be so employed who does not present a certificate made by or under the direction of the board of directors of the district in which such child resides, of his compliance with the requirements of section five of this act; and said certificate shall also give the place and date of birth of such child as nearly accurate as may be; and every owner, superintendent or overseer of any establishment or company employing any such child shall keep such certificate on file so long as such child is employed therein. The form of said certificate shall be furnished by the superintendent of public instruction.

Every owner, superintendent, or overseer of any such establishment or company who employs or permits to be employed any child in violation of any of the provisions of the two next preceding sections, and every parent or guardian who permits such employment, shall be fined not exceeding twenty-five dollars.

Duties of Truant Officer.

The truant officers shall, at least once in every school term, and as often as the board of directors shall require, visit the establishments or companies employing such children in their respective cities, and ascertain whether the provisions of the three next preceding sections hereof are duly observed, and report all violations thereof to the said board.

The truant officers shall demand the names of the children under fifteen years of age employed in such establishments or companies in their respective cities, and shall require the certificates of age and school attendance, prescribed in section six of this act, to be produced for their inspection; and a refusal to produce such certificate shall be punished by a fine not exceeding twenty-five dollars.

Penalty for Employing Children Under Sixteen Years of Age.

Every owner, superintendent or overseer of any such establishment or company who employs or permits to be employed therein a child under sixteen years of age who cannot write his name, age and place of residence legibly, while the public schools in the city where such child lives are in session, shall for every such offense be fined not exceeding twenty-five dollars.

Board of Directors—Duties of.

The board of directors of each school district shall make all needful rules and provisions governing habitual truants and children who may be found wandering about in the streets or public places therein, having no lawful occupation or business, not attending school, and shall make such rules as will be most conducive to the welfare of such children in such city; and shall designate or provide suitable provisions for the discipline and instruction of such children.

The board of directors of each school district under the provisions of this act shall annually report to the state board of education whether their respective cities have made provisions required by this act; and in case the said board of any city shall in any year refuse or neglect to comply with the provisions of section three and section eleven of this act, or of either of them, after having been duly notified by the superintendent of public instruction, twenty-five per centum of the money apportioned to such city from the state for school purposes shall be withheld until the provisions of section three and section eleven of this act have been complied with.

Fines Applied, How.

All fines under the provisions of this act shall inure and be applied to the support of the public schools in the city where such offense was committed.

Jurisdiction of Superior Courts.

The superior courts of the state shall have jurisdiction in their respective counties of all cases arising under this act, and all rules passed in conformity with this act.

Costs.

No officer performing any duty under any of the provisions of this act, or under the provisions of any rules that may be passed in pursuance hereof, shall not in any wise become liable for any costs that may accrue in the performance of any duty. [Approved Mar. 14, 1899; L. 1899, p. 280.]

§ 2342. Graded and High Schools—Limits of Districts.

Each incorporated city or town in the state shall be comprised in one school district, and shall be under the control of one board of directors: Provided, That nothing in this section shall be so construed as to prevent the extension of such city or town district a reasonable distance beyond the limits of such city or town: And provided further, That nothing in this section shall be so construed as to change or disturb the boundaries of any school district organized prior to the incorporation of any city or town, except in cases of incorporation of cities or towns lying partly in two or more school districts organized prior to the incorporation of such city or town, or the extension of the boundaries of cities or towns beyond the limits of the school districts in which they are situated, or in cases where two or more cities or towns unite, as provided by law: And provided further, That the fact of the issuance of bonds by school districts, heretofore or hereafter, shall not prevent the formation of new school districts whether or not such bonds have been redeemed, canceled or paid in whole or in part; and shall not prevent the transfer or uniting with another school district of a portion, or the whole of a district where bonds have been or may hereafter be issued. [Amendment, approved Feb. 21, 1899; L. 1899, p. 21.]

§ 2346. Board of Education in Cities of 10,000 and Over.

The said board of directors shall consist of five members, who shall be elected by ballot by the qualified electors of the district and shall hold their offices for a term of three years, and until their successors are elected and qualified: Provided, That the terms of members of the board of directors in any city, to which the provisions of this title apply, shall serve the time for which they were elected, and if such time would otherwise elapse prior to the first Monday of January, then they shall respectively serve until the said first Monday of January next following the day when their terms would otherwise respectively expire. [Amendment, approved Mar. 16, 1903; L. 1903, p. 220.]

§ 2347. Annual Elections—Notices—Polls.

The regular district election in each district contemplated by this chapter shall be held upon the first Saturday of December in each year, beginning with the year 1903. The board of directors shall cause written or printed notices to be posted, specifying the day and place of such election, and the time dur

ing which the ballot box will be kept open; not less, however, than six hours. Said notices shall be posted in at least one place in each ward in the district at least twenty days previous to the time of election. Said notices shall also be published three times in two daily papers published in the district, and if there be no daily or dailies, then in the weekly paper or papers in three regular issues next preceding the day of such election. If the board of directors fail to give notice at such time, as herein provided, then any five legal voters residing in the district may give such notice over their own names, and such election may be held after the day fixed by this title for such election. All elections shall be by ballot and in the absence of any notice specifying the hour, the ballot box shall be open at one o'clock P. M., and be closed at eight o'clock P. M. [Amendment, approved Mar. 16, 1903; L. 1903, p. 220.]

§ 2348. Registration.

The board of directors shall, at a regular meeting, provide not more than two voting places in each ward of the city, and appoint judges and clerks of election, who shall observe and cause to be observed at such election all the election laws of the state applicable thereto not otherwise provided for: Provided, That only those persons, male and female, who have complied with the laws governing registration in cities of the class for which this section provides, shall be permitted to vote, and that no person shall be permitted to vote at said election except in the ward in which he or she resides. In cities of ten thousand (10,000) or more inhabitants, books of registration shall be open for the purpose of registration at not more than two convenient places in the district, to be designated by the board of directors, on each day between the hours of 9 o'clock A. M. and 4 o'clock P. M. of each day, except legal holidays, and they shall be closed and no names shall be registered therein during the five days preceding any special election, and during the ten days preceding any general election held in such district, except only on the last day, not Sunday or a legal holiday, preceding the day of said election, said books shall again be opened during the hours specified for the purpose of further registration. The secretary of the board shall give notice of the closing of the books of registration in his district by a notice published in a newspaper of general circulation, published in his district, at least ten days before the day for first closing of said books: Provided, however, That any elector of said district who has duly registered as a voter at any general election in said district shall be allowed to vote at the next succeeding school election held in the same year without registration. Should any of the judges be absent at the opening of the polls, the electors present shall appoint a legal voter, who, upon taking oath, shall be qualified to fill the vacancy. [Amendment, approved Mar. 9, 1899; L. 1899, p. 317.]

§ 2367. Estimate of Funds—Levy.

The board of directors shall annually, at a meeting next preceding the annual tax levy for state and county purposes, report to the board of county commissioners an estimate of the amount of funds in addition to estimated receipts from the state tax required for the support of the schools, for the purchase

of school sites, the erection and furnishing of school buildings, the payment of interest upon all bonds issued for school purposes, and the creation of a sinking fund for the payment of such indebtedness, if any, and the county commissioners are hereby authorized and required to levy and collect said additional amount the same as other taxes; Provided, That in case the purchase of school sites and the erection of buildings shall require an expenditure exceeding fifty thousand dollars (\$50,000) for any one current school year, the question shall be submitted to a vote of the electors of the district, at the time and places the board of directors may appoint. The board of directors shall, previous to such election, designate in at least one daily paper published in the district, if there be one, if not, then in such weekly papers as may be selected by the board, the place or places where such an election shall be held, the locality of the site or sites required, and the proposed cost of the buildings to be erected thereon: Provided, That the board of directors of any school district of this state may proceed to condemn and appropriate sufficient land for a schoolhouse site not to exceed one acre in extent; such condemnation proceedings shall be in accordance with the laws of this state providing for appropriating private property for public use. [Amendment, approved Mar. 9, 1899; L. 1899, p. 318.]

§ 2368. Limit of Tax Levy for Schools.

The aggregate tax for school purposes in cities of ten thousand or more inhabitants shall in no one year exceed one per cent upon all the taxable property in the district: Provided, The board of directors by unanimous vote of all the members thereof, may determine upon a greater tax, not, however, exceeding two per cent upon all the taxable property of the district. [Amendment, approved Mar. 16, 1903; L. 1903, p. 191.]

§ 2369. Teachers' Institutes—When Held.

Whenever the number of school districts in any county is twenty-five, or more, the county superintendent must hold a teachers' institute each school year, and every teacher holding a valid certificate, employed in a common school in the county, must attend such institute during its whole time. County superintendents of contiguous counties may by mutual arrangements hold a joint institute, the expenses to be shared in proportion to the departments (rooms) maintained in the counties as shown by the county superintendent's last annual reports. The work of the institute shall be in conformity to a syllabus prepared by the superintendent of public instruction, and a committee of three county superintendents appointed by him, for at least one-half of the program, the remaining part to be supplied by the county superintendent, or county superintendents of the county or counties holding the institute. [Amended by act of 1899; L. 1899, p. 319; amendment, approved Mar. 14, 1903; L. 1903, p. 179.]

§ 2371. Length of Sessions of Institute.

Each session of the institute must continue not less than five days. [Amendment, approved Mar. 9, 1899; L. 1899, p. 319.]

§ 2372. Credit for Attendance.

When the institute is held during the time when a teacher is employed in teaching, his pay shall not be diminished by reason of his attendance, when certified to by the county superintendent, and in addition to the actual attendance earned by the district, an additional attendance shall be accredited to the district, determined by multiplying the average daily attendance for the term by the number of days the teacher attended the institute. [Amendment, approved Mar. 9, 1899; L. 1899, p. 320.]

§ 2375. Text Books—Classification of Districts—Commission.

That for the purpose of this act the school district of the state of Washington shall be and they hereby are divided into and shall consist of two classes, viz.: School districts of the first class and school districts of the second class, and the school districts of the first class shall consist of all of the school districts in the state which are maintaining or which shall hereafter establish and maintain a high school of not less than a two years' course of study. Every other school district of the state shall be a school district of the second class, and the school districts of the second class of the state of Washington shall consist of all school districts which are not maintaining or which shall not hereafter establish and maintain a high school of not less than a two years' course of study.

Commissions for Selection of.

That the text-books for use in the public schools of each school district of the first class shall be selected by the text-book commission of such school district. The text-book commission of such school district shall consist of five persons, including the city superintendent, or, if there be none, then the principal of the high school, who shall be ex-officio chairman of the commission, two members of the city board of education, or board of school directors of the district, to be designated by such board, and one of whom shall be ex-officio secretary of the commission; and two lawfully qualified teachers engaged in teaching in such school district, to be appointed by the board of education or board of school directors of the district. Each member of the text-book commission shall take the oath to faithfully discharge the duties of his office. The term of office of the text-book commissions shall be five years and until their successors are appointed and qualified. A text-book commission shall be appointed in each school district of the first class, in the month of June in the year 1901, and in every month of June every five years thereafter. Said text-book commission shall have power to select text-books for the use in the public schools of the school district for which it is appointed, and it shall be the duty of the board of directors to require the introduction and use of all text-books lawfully adopted for use in their respective districts. The text-books selected by the commission shall cover such branches and studies as are required to be taught in like schools,

by the state course of study issued by the state superintendent of public instruction, and as are required to be taught by the laws of the state of Washington. Any text-book selected for use in the schools of the district shall continue in use until displaced or replaced by order of the text-book commission, and no text-book selected or introduced into the schools by the text-book commission shall be displaced or replaced within three years from the date of its introduction into the schools. But nothing in this act or any other law shall be so construed as to prevent the text-book commission of any school district of the first class from using or introducing at any time, any supplementary or additional books which may from time to time be deemed necessary in order to maintain the highest standard of excellence in the schools of the district.

Duties of Commission.

The text-book commission of each school district of the first class shall, between the first day of April and the first day of July of each year, when any text-books are to be selected by such commission, publish an advertisement in a newspaper of general circulation published in the county, or if there be no such paper published in the county, then in any newspaper published and having a general circulation in the state, to the effect that the commission will, on a day therein named, select text-books for the use of the schools in such districts, and invite proposals for the furnishing of such books, the proposals to state an exchange, a wholesale and a retail price at which the proposer will furnish books for the schools of the district during the period of their use in such schools.

Duties of Principals.

It shall be the duty of the principal of each school in all districts of the first class to prepare and issue, under the direction of the city board of education, or board of school directors of the district, a course of study for his schools, which course of study must, before going into effect, be approved by the state superintendent of public instruction. Such course of study shall conform to the manual, or general outline, prescribed by the state superintendent of public instruction, and all examinations and promotions under the same shall be based upon the minimum credits in each study, as prescribed by the state superintendent of public instruction in his general manual or outline course of study.

County Board of Education Created.

That there shall be in each county in this state containing any school district or districts of the second class, a county board of education, which shall be composed of five persons, including the county superintendent of common schools, who shall be ex-officio president of the board, two lawfully qualified teachers engaged in teaching in the county, and two citizen taxpayers of the county, which last-mentioned four members of the county board of education shall be appointed by the board of county commissioners of each and every county

in this state. Each member of the county board of education shall take an oath to faithfully and honestly discharge the duties of his office. The term of office of the members of the county board of education shall be four years, and they shall hold their office until their successors are appointed and qualified. The board of county commissioners in each county shall, in the month of March, 1901, and in the month of March every four years thereafter, appoint the county board of education for their respective counties, and they shall have power and it shall be their duty to fill all vacancies that may occur in said board.

Duties of Board.

That the county board of education in each county of this state shall, between the first day of April and the first day of July of each year when any text-books are to be selected, publish an advertisement in a newspaper of general circulation in said county to the effect that said county board of education will on a day named therein select text-books for the use of all the school districts of the second class in said county, and invite proposals for the furnishing of such books, the proposals to state an exchange price, a wholesale price and a retail price at which the proposer will furnish books for the schools of all districts of the second class during the period of their use in the schools of such districts. Any text-books selected for use in the schools shall remain in use until the same shall be displaced or replaced by the county board of education; but no book selected and introduced into the schools shall in any event be changed within five years from the date of introduction. The county board of education or the officers of any school district of the second class, shall have power to select, introduce and use additional and supplementary books at any time, when they deem it necessary, in order to establish and maintain the highest standard of excellence in their schools. The county board of education shall hold an annual meeting at the county seat, on the second Monday in July, 1901, and on the second Monday in July in each year thereafter, for the purpose of transacting any business that may lawfully come before it, and they shall meet at such other times as may be deemed necessary by the majority of the board, and it shall be the duty of the county superintendent, as president of the board, to call a meeting at any time, upon the written request of three members of the board: Provided, That the superintendent of public instruction shall have power and it shall be his duty to prescribe a uniform course of study for all schools of the second class: Provided further, That any publisher or publishers of school books furnishing books under the provisions of this act to any district or districts of this state shall deposit with the superintendent of public instruction a copy of any and all books so furnished.

Compensation.

Each member of the text-book commission in school districts of the first class shall receive as compensation for his services, the sum of three dollars for

each day during which he is in attendance upon the meetings of the text-book commission, and such compensation shall be paid from the funds of the school district. Each member of the county board of education shall receive ten cents for each mile traveled in attendance upon a meeting of the board, and the same shall be paid from the funds of the county.

Joint Districts.

In all joint districts of the second class, that is to say, in all school districts of the second class situated in more than one county, such joint school district shall, for the purposes of this act, be held and deemed to be a school district within the one of said counties first created, and for all purposes of this act it shall be under the control and jurisdiction of the county board of education of such oldest county.

Repeal.

That section 105, being article 1, of chapter 5, of the Code of Public Instruction of the state of Washington, passed by the legislature of the state of Washington at the session of 1897, approved March 19, 1897, and all other parts of said Code of Public Instruction in any wise in conflict with the provisions of this act, and all other acts and parts of acts in any wise conflicting with the provisions of this act, be and the same are hereby repealed. [Passed notwithstanding governor's veto, June 12, 1901; L. 1901, p. 8, special session.]

Adoption of system of text-books.—It being within the legislative power to enact laws authorizing boards of education to enter into contracts providing for the exclusive use of certain text-books during a limited period, the provisions of the Code of Public Instruction (Laws 1897, p. 356), which empower the state board of education to adopt text-books for the schools and to contract with the publishers for the use of certain text-books during a period of five years, will not be regarded as unconstitutional on the ground of being creative of monopolies and therefore opposed to public policy: *Rand, McNally & Co. v. Hartranft*, 29 Wash. 591, 70 Pac. 77.

A contract entered into by the state board of education, under Laws of 1897, page 356, whereby it was agreed plaintiff should supply certain books to the public schools for a period of five years, being a valid one, its obligation could not be impaired either by subsequent legislation or by the action of any board proceeding by authority of such legislation: *Id.*

The state board of education, pursuant to Laws 1897, page 356, awarded plaintiff a contract for five years to supply readers for grades numbered from one to six of the public schools. The defendants

as a county board of education selected another reader for the first grade, and shifted the use of plaintiff's readers to grades numbered from two to seven. Plaintiff sought to have the board enjoined from interfering with its contract, and thereby reducing its profits. The defendants answered that plaintiff's sales would not be decreased by the change. Held, that by demurring to the answer, plaintiff admitted the truth of its allegations and therefore no damage was shown, and that equity would not interfere by injunction in behalf of one who was merely nominally damaged as to profits arising from a contract: *Id.*

Laws 1901 (Extra Session), page 8, which authorize local school boards to adopt text-books, does not empower them to make selections which will impair existing contracts made by the state board of education, and such act would be unconstitutional in so far as it impaired contracts made by the state board under Laws of 1897, page 356, although the act may be operative and effective as a constitutional law, after the expiration of existing contracts that might be affected by it: *Rand, McNally & Co. v. Hartranft*, 29 Wash. 591, 70 Pac. 77.

§ 2376a. Circulating Library—Establishment of.

The county superintendent of each county of this state may establish a circulating library for the use and benefit of the pupils of the common schools of such county. [Amended by act of 1901; L. 1901, p. 380; amendment, approved Mar. 14, 1903; L. 1903, p. 180.]

§ 2377. Special Election on Free Text-Books, How Called.

At the time fixed for the levy of the county tax, the county commissioners of each county may levy a tax sufficient to carry into effect the provisions of section 106 of this act: Provided, That said tax shall not exceed one-tenth of one mill on each dollar of the assessed valuation of the [said] county. The proceeds of said tax shall, when collected, constitute a circulating school library fund for the payment of all bills created by the purchase of such books as are indicated in sections one hundred and five (105) and one hundred and six (106) of this act, or shall have received the indorsement of the superintendent of public instruction or the county board of education: Provided, That the county superintendent shall purchase no books for such circulating library until there shall be to the credit of the circulating school library fund sufficient money to pay the purchase price thereof: Provided, further, That the county commissioners shall allow no bill or bills against said fund until it shall have been certified to be correct by the county superintendent. [Amended by act of 1901; L. 1901, p. 380; amendment, approved Mar. 14, 1903; L. 1903, p. 180.]

§ 2378. Board Shall Furnish Free Text-Books—When.

It shall be the duty of the county superintendent to purchase the books and to enforce such rules and regulations for their distribution, use, care and preservation as shall have been adopted by the county board of education, or as he may deem necessary in case no such rules have been adopted by the county board of education. [Amended by act of 1901; L. 1901, p. 380; Amendment, approved Mar. 14, 1903; L. 1903, p. 181.]

§ 2381. Annual Tax, Limit of.

In addition to the provisions for the support of common schools hereinbefore provided, it shall be the duty of the state board of equalization, annually, at the time of levying tax for state purposes, to levy a tax that shall be sufficient to produce a sum which, when added to the estimated amount of money to be derived from the interest on the state permanent school fund for the current fiscal year, shall equal ten dollars for each child of school age residing in the state as shown by the last report of the several county superintendents to the superintendent of public instruction: Provided, That said tax shall not exceed five mills on the dollar. Said tax levy shall be certified to the several county auditors in the same manner as other state taxes are required to be certified, and shall be collected and transmitted to the state treasurer at the same time and in the same manner as other state taxes are required to be collected and transmitted; and it shall be the duty of the state auditor within thirty days after the date at which county treasurers are required to transmit state funds to the

state treasurer, to certify to the superintendent of public instruction the amount of all state annual school funds in the hands of the state treasurer subject to apportionment. [Amended by act of 1899; L. 1899, p. 320; amendment, approved Mar. 19, 1901; L. 1901, p. 380.]

§ 2382. Levy of Tax Increased by Vote.

The board of directors, when in their judgment it is necessary, for the purpose of furnishing additional school facilities for their district, or for the payment of teachers' wages, or for the building of one or more schoolhouses, or for the repairing of one or more schoolhouses, or for the building of additions thereto, or for the purchase of fuel, supplies, globes, maps, charts, books of reference or other appliances or apparatus for teaching, or for any or all of these purposes, may levy especial tax on the taxable property of the district, not to exceed ten mills on the dollar: Provided, That no tax exceeding five mills on the dollar shall be levied until such levy shall have been ordered by a majority vote of the legal electors of the district, at a special election called for that purpose: Provided, further, That boards of directors of union schools may levy a special tax on the taxable property of the union district not to exceed three mills on the dollar, and the levying of such tax by such union school district board shall not prevent the electors of any district within such union district from levying a tax of ten mills, as hereinbefore provided. School district elections for the purpose of voting special tax, shall be called and conducted in the manner provided for calling and conducting annual school elections. At such elections the ballots shall contain the words "Tax, yes," or "Tax, no." The officers of the election shall certify the result of the election to the clerk of the district, who shall file said certificate as a part of his records. Whenever a special tax is ordered to be levied, the clerk of the district shall, on or before the first day of September, of the year in which such special tax is ordered to be levied, make to the county auditor a certified statement of the number of mills of such special tax which has been ordered to be levied in such district. The county auditor shall extend the same against all the taxable property within such district upon the general assessment-roll of the county, showing the amount and kind of property so assessed, and to certify the same to the county treasurer. The county treasurer shall proceed to collect the tax in the same manner and at the same time and with the same power and authority to enforce payment of the same, as in the case of county and state taxes. The county treasurer shall place any tax so collected to the credit of the district to which it belongs. [Amendment, approved Mar. 19, 1901; L. 1901, p. 380.]

§ 2386. School Districts, New—Division of Funds.

When a new district is formed from one or more old districts it shall be entitled to a just share of the school moneys to the credit of the one or more old districts, from which the new district is formed, at the time the petition was granted to establish the new district. And the county superintendent (or in case of an appeal, the board of county commissioners) shall divide such moneys, and also such moneys as may, for the current year, afterward be apportioned to

the said one or more old districts, according to the number of school children resident in the new district, as may be ascertained by a census taken for that purpose: Provided, That the new district shall be entitled to all special tax levied within the boundaries of the new district, for the current year in which the new district is formed. And if such special tax, or any part of it, has already been collected and placed to the credit of the aforementioned one or more old districts, it shall be the duty of the county treasurer, upon the order of the county superintendent, to transfer such special tax to the credit of the new district.

An emergency exists, and this act shall take effect immediately. [Amendment, approved Feb. 21, 1899; L. 1899, p. 22.]

§ 2386a. Permanent School Funds—Investment in State Warrants.

It shall be the duty of the treasurer of the state of Washington, whenever he shall have in his hands any money belonging to the permanent school fund of the state in amount equal to or in excess of any warrant hereafter drawn upon the general fund of the state presented to him for payment by the holder thereof, which warrant the treasurer cannot pay upon presentation for want of funds available for the redemption of such warrant at the time of presentation, to give to the holder of such warrant, out of the permanent school fund the amount of the face or par value of such warrant.

Duty of Warrant Holder.

It shall be the duty of the holder of any state general fund warrant, upon presenting the same to the treasurer for payment, to accept from the treasurer therefor the amount therein directed to be paid, whenever the treasurer has in his hands money belonging to the permanent school fund in amount equal to or in excess of the face or par value of such general fund warrant, and the treasurer shall not indorse any general fund warrant, "not paid for want of funds" when there shall be in his hands money belonging to the permanent school fund in amount equal to or in excess of any such warrant presented for payment, and from and after the date of such purchase such warrants shall bear interest as though they were stamped "not paid for want of funds."

Duty of State Treasurer.

The state treasurer shall stamp or write across the face of each of such warrants the words "purchased by the permanent school fund," and shall keep a record of all such warrants so purchased, and shall report to the state auditor by number, amount and date of purchase all state general fund warrants purchased by him with permanent school funds, and shall be credited therewith and shall safely keep such warrants until they shall be paid out of the general fund in their regular order. When so paid he shall report the payment thereof to the auditor by number, amount and date of payment together with the amount of interest accrued thereon from date of purchase to date of payment at the legal rate, and shall credit the permanent school fund with the principal thereof, and the current common school fund with the interest accrued thereon.

An emergency exists and this act shall take effect immediately. [Approved Mar. 7, 1899; L. 1899, p. 53.]

§ 2386b. Permanent School Fund—Investment in State Bonds.

Whenever there shall be in the hands of the state treasurer, belonging to the state permanent school fund, money to the amount of five thousand dollars or more, of which no investment can be made in the securities now or hereafter authorized by law, and the state shall have an outstanding general fund warrant indebtedness in amount equal to or greater than the amount of five thousand dollars (\$5,000), the governor of the state and the state auditor are hereby authorized, and it shall be their duty, to issue the bonds of the state of Washington in amount equal to that amount, and sell and deliver such bond to the state treasurer for the account of the state permanent school fund at the face or par value thereof. [Approved Mar. 8, 1899; L. 1899, p. 67.]

Denomination—Interest—Payment of.

Such bonds shall bear date of issue and be issued in denominations of five thousand dollars (\$5,000), and shall bear interest at the rate of three and one-half per cent per annum, payable semi-annually on the first day of May and November of each year until paid, payable out of the state general fund, and the state treasurer is hereby authorized and directed to transfer from the said state general fund to the said current school fund sufficient money to pay said interest as the same falls due, and certify the same to the state auditor, which certificate shall be authority to said auditor to make the necessary and proper entries in the books and records of his office to show such transfer. The principal of said bonds shall be payable, any or all of them, on or before twenty years from the date of issue, to the state treasurer for the account of the state permanent school fund, out of the state general fund, to which the proceeds thereof shall have been credited, and when paid the principal thereof shall be credited to the state permanent school fund. [Amendment, passed Mar. 13, 1901; became a law without the governor's approval; L. 1901, p. 388, § 1.]

Attestation of.

Said bonds shall be printed on good bond paper and shall each be signed by the governor and personally attested by the state auditor, and sealed with the seal of the state auditor, but no coupon need be attached thereto.

Duties of State Treasurer.

It shall be the duty of the state treasurer, whenever any such bonds are executed and presented to him to invest the state permanent school fund in such bonds to the amount of the face or par value thereof at par, and receipt to the state auditor therefor, and at once transfer from the state permanent school fund to the state general fund money to the amount of the face or par value of such bonds so delivered to him, and the money so transferred to the general fund shall be at once used in the redemption of outstanding general fund warrants.

All interest paid on such bonds shall be credited to the current common school fund of the state on the day it falls due.

It shall be the duty of the state treasurer to redeem any of said bonds on any interest pay day whenever, and to the extent that he shall have in his hands money belonging to the state general fund equal to one or more of such bonds in excess of all outstanding general fund warrants.

An emergency exists, and this act shall take effect immediately. [Approved Mar. 8, 1899; L. 1899, p. 67.]

§ 2387. School Directors may Borrow Money and Issue Bond Limitations.

The board of directors of any school district in this state may borrow money and issue negotiable coupon bonds therefor to an amount not to exceed five per cent of the taxable property in such district, as shown by the last assessment-roll for county and state purposes: Provided, That in incorporated cities the assessment shall be taken from the last assessment for city purposes, for the purpose of funding outstanding indebtedness, or bonds heretofore issued, or issued under the provisions of this act, or for the purchase of schoolhouse site or sites, building one or more schoolhouses and providing the same with all necessary furniture and apparatus, or for any or all of these purposes, when authorized by a vote of the district so to do, as provided in section 118 of this act: Provided, further, That the bonds so issued shall bear a rate of interest not to exceed six per cent per annum, interest payable annually or semi-annually, payable and redeemable at such time as may be designated in the bonds, but not to exceed twenty (20) years from date of issue: Provided, further, When the indebtedness of such district exceeds five per cent of its taxable property warrants issued for those necessary expenses made mandatory in the constitution and provided for by the legislature of the state, which expenses are hereby declared to include teachers, janitors, and officers, salaries, expenses of construction, maintenance and rent of school buildings, including sites, may be funded under the provisions of this act. [Amendment, became law without approval of governor Mar. 16, 1903; L. 1903, p. 310.]

§ 2388. District Bonds—Elections.— The fact that notice of election for the purpose of authorizing the issuance of bonds by a school district arbitrarily fixed the rate of interest at four per cent, instead of leaving the rate open to competition, would not invalidate the election; since under Laws 1897, page 401, section 117, the issuance of such bonds bearing a rate of interest not exceeding ten per cent per annum is authorized, and under Laws 1897, section 118, it is provided that notices of election to determine the question of issuing bonds "shall state amount of bonds proposed to be issued, time they are to run, and purpose for which the money is to be used," but it is nowhere required that the matter of interest shall be submitted to popular vote, and hence the statement of rate of inter-

est in the election notice was an immaterial matter, not binding on the board, nor invalidating the election: *Parkinson v. Seattle School Dist.*, 28 Wash. 335, 68 Pac. 875.

§ 2389. Sale of bonds.—The failure of the treasurer in his notice to require bidders to name a rate of interest at which they would be willing to purchase the bonds, would be, in the absence of bad faith or oppression, but a mere irregularity not affecting the validity of the bonds, where the bids were otherwise within the statutory limitations, and the one accepted was for the face of the bonds, with a premium which, in effect, decreased the interest rate named by the school district: *Parkinson v. Seattle School Dist.*, 28 Wash. 335, 68 Pac. 875.

§ 2391. Levy for Interest and Redemption.

The county commissioners must ascertain and levy annually the tax necessary to pay the interest upon such bonds as it becomes due, and at the expiration of one-half of the time for which said bonds are to run, and annually thereafter until full payment of said bonds is made, they may, if deemed advisable, levy, in addition to the tax required to pay the interest, such amount for sinking fund to meet the payment of said bonds at maturity, to be determined by dividing the amount of bonds outstanding by the remaining number of years to run, and the fund arising from such levy shall be kept as the bond redemption fund of said district, and each of said tax levies shall be a lien upon the property in said district, and must be collected in the same manner as taxes for other school purposes: Provided, That the county treasurer, when authorized to do so, by the board of directors of any school district, may invest any accumulated sinking fund of said district in school, county or state warrants of the state of Washington, and all profits accruing from such investment and the funds so invested shall revert to the sinking fund of said district, and the county treasurer shall be custodian of all warrants purchased by and with the said sinking fund until the same are redeemed. [Amendment, approved Mar. 9, 1899; L. 1899, p. 321.]

§ 2392. Payment of interest.—General Statutes, section 2702, declaring that the county treasurer must pay out of any moneys belonging to the school district the interest upon any bonds issued by the school district under sections 2697-2701, authorizing districts to borrow money and issue coupon bonds therefor, when the same become due and are presented at the treasurer's office, is applicable only to moneys

belonging to the school district in the special interest fund for payment of interest upon bonds, and is unconstitutional, in so far as it purports to command the treasurer to pay interest coupons from moneys raised by taxation for other school purposes (*Munson v. Mudgett*, 15 Wash. 321, 46 Pac. 256, distinguished): *Sheldon v. Purdy*, and *Harris & Co. v. Purdy*, 17 Wash. 135, 49 Pac. 228.

§ 2394. Refunding Bonds.

Whenever any school district in this state shall have heretofore, under any of the acts of the territorial or state legislature now in force, issued any bonds for the purchase of any schoolhouse site, or the building of any schoolhouse, or the furnishing of the same, and the amount of said bonds so issued and negotiated did not, at the time of their issue, exceed the sum of five per centum of the taxable property of the said school district, it shall be lawful for the said school district to issue and exchange its bonds at a rate of interest not greater than that borne by the original issue of bonds, par for par, without any further vote of the school district than that heretofore had or required by existing law at the time of their issue, and said bonds, shall in all respects, conform to and be governed by the other provisions of this act: Provided, That in cities of ten thousand population or more, whenever any bonds issued under the provisions of this article shall reach maturity and shall remain unpaid, the board of directors thereof shall have the power to fund the same by issuing coupon bonds conformable to the requirements of this act and exchanging the same par for par, for the outstanding bonds as aforesaid, without any further vote of the school district: Provided, further, That such bonds shall be issued in denominations

of not less than one hundred dollars nor more than one thousand dollars, shall be redeemable within twenty years from date of issue, and shall draw a rate of interest not to exceed six per centum per annum.

An emergency exists and this act shall take effect immediately. [Amendment, approved Mar. 16, 1901; L. 1901, p. 216.]

§ 2406. Validating Diplomas.

Nothing in this act shall be construed to invalidate the life diplomas granted under the laws of the territory of Washington, or to invalidate any certificate or diploma heretofore granted in accordance with the laws of the state of Washington, but the same shall continue in effect in accordance with the provisions of the laws under which they were granted. [Amendment, approved Mar. 14, 1903; L. 1903, p. 181.]

§ 2408. State Certificates, to Whom Granted.

State certificates shall be granted to such applicants only as shall file with the board satisfactory evidence of having taught successfully twenty-seven months, at least nine of which shall have been in the public schools of this state. The applicant must pass a satisfactory examination in all the branches required for first grade common school certificates, also plain geometry, geology, botany, zoology, civil government, psychology, history of education, bookkeeping, composition and general history or shall file with the board a certified copy of a diploma from some state normal school or of a state or territorial certificate from a state or territory, the requirements to obtain which shall not have been less than those required by this act. Life diplomas shall be granted to such applicants only as shall file with the board satisfactory evidence that they have taught successfully for ninety months, not less than fifteen of which shall have been in the public schools of this state. In other respects the requirements shall be the same as those for state certificates; but no state certificate or life diploma shall ever be granted without examination to the holder of a diploma from any state normal school unless said school shall first have been placed on the accredited list by the state board of education as provided in section 27 of the Code of Public Instruction of this state, nor shall a state certificate or a life diploma be granted without examination to the holder of a state certificate or life diploma unless the name of said state shall be found on the accredited list provided for in the fifth subdivision of section 27 of said Code of Public Instruction. The fee for state certificates shall be three dollars and for life diplomas five dollars. Said fees must be deposited with the application, and cannot be refunded to the applicant unless the application be withdrawn before it has been finally considered by the board. Said fee shall be paid into the state treasury. [Amendment, approved Mar. 14, 1903; L. 1903, p. 181.]

§ 2409. State Certificates Without Examination.

The state board shall also have power to grant state certificates without examination to all applicants who are graduates of a regular four-year collegiate course of the university of Washington, the agricultural college and school of

science, or of other reputable institutions of learning whose requirements of graduation are equal to the requirements of the university of Washington: Provided, That the applicant shall file with the board a certified copy of his diploma and a copy of the course of study for the year in which he graduated: Provided, further, That the applicant shall pass a satisfactory examination before the state board of education in theory and practice of teaching, psychology and history of education and shall file with the board satisfactory evidence of having taught successfully for twenty-seven months, at least nine of which shall have been in the public schools of this state; unless the name of the institution by which it was granted shall appear upon the accredited list provided for in the fifth subdivision of section 27 of the Code of Public Instruction of this state. [Amendment, approved Mar. 14, 1903; L. 1903, p. 182.]

§ 2410. County Examination of Teachers.

There shall be held at the county seat of each county on the second Thursday of the months of May, August and November, of each year, an examination of applicants for teachers' certificates, which examination shall be conducted by the county superintendent according to the rules and regulations of the state board of education: Provided, That in case of sickness or disability of the superintendent he may appoint a suitable teacher or teachers to assist or conduct the same, subject to the same laws, rules and regulations as himself, and the county superintendent shall in reporting the examination to the superintendent of public instruction, as hereinafter provided, forward such apportionment [appointment] in writing. [Amendment, approved Mar. 14, 1903; L. 1903, p. 182.]

§ 2411. Requirements for Certificate.

All applicants at the examinations mentioned in the preceding section shall be at least seventeen years of age, and shall be examined according to the rules and regulations of the state board of education, in reading, penmanship, orthography, written and mental arithmetic, geography, English grammar, physiology and hygiene, history and constitution of the United States, school law and the constitution of the state of Washington, and the theory and art of teaching; but no person shall receive a first grade certificate who does not pass a satisfactory examination in the additional branches of physics, English literature and algebra, and who does not present satisfactory written evidence of having taught successfully one school year of nine months: Provided, That the state board of education may adopt two subjects in lieu of algebra and physics for teachers who have taught exclusively in primary schools for not less than fifty months, and the certificates granted to such primary teachers shall be known as first grade primary certificates, and shall entitle the holders to teach only in the primary grades of city and village schools. The state superintendent shall also have power to grant common school certificates without examination to all applicants who are graduates of a regular four-year collegiate course of the university of Washington, the agricultural college and school of science, state normal schools equal in requirements to the state normal schools of Washing-

ton, or of other reputable institutions of learning whose requirements for graduation are equal to the requirements of the university of Washington; also to all applicants who hold state certificates or diplomas equal in requirements to the requirements of the state of Washington: Provided, That an applicant shall pass an examination in state school law and constitution with a standing required for a first grade certificate: Provided, further, That the provisions of this section shall not apply to the holders of diplomas from institutions of learning unless the name of the institution granting said diploma shall be found upon the accredited list provided for in the fifth subdivision of section 27 of the Code of Public Instruction of this state, nor shall they apply to the holders of state certificates or life diplomas from states whose names are not found upon the accredited list provided for in the section above mentioned. [Amended by act of 1899, L. 1899; p. 321; Amendment, approved Mar. 14, 1903; L. 1903, p. 183.]

§ 2412. Fee for Examination.

Each applicant before taking the examination for a certificate, or upon application for a temporary certificate or for a renewal, shall pay to the county superintendent the sum of one dollar, and shall receive a receipt therefor. The fees so received by the superintendent shall in no case be returned to the applicant, but shall be paid to the county treasurer to the credit of the institute fund. [Amendment, approved Mar. 9, 1899; L. 1899, p. 321.]

§ 2414. Renewal of First Grade Certificate.

The holder of a first grade certificate who shall present to the superintendent of public instruction evidence of having taught successfully twenty-four school months during the time said certificate has been in force, may have his certificate renewed without further examination, upon its presentation, for a like term of five years, and such renewal and succeeding renewals shall be for like terms of five years: Provided, That such renewal certificates shall lapse upon the failure of its holder to teach for a period of two consecutive school years: Provided, further, That a teacher holding a second grade certificate, who has taught in the primary grades of the public schools of the state for not less than thirty-six months immediately preceding the expiration of said certificate, and who has taken at least one subject of the teacher's reading circle work each year, under the regulations prescribed by the state board of education, may have said certificate renewed for two years as a primary teacher only, but such certificate shall be entitled to but a single renewal. [Amended by act of 1899; L. 1899, p. 322; amendment, approved Mar. 14, 1903; L. 1903, p. 184.]

§ 2418. Common schools—Teacher's certificate, revocation of.—Mere inconsiderate language or slight impropriety of conduct of a teacher, not involving moral turpitude, in endeavoring to secure a first-

grade certificate, is not such "sufficient cause" as will warrant the revocation of valid certificates held by her: *Brown v. Gear*, 21 Wash. 148, 57 Pac. 359.

§ 2419. Elections—When and Where Held.

The election of school district directors shall, except as otherwise provided by law, be held on the first Saturday in March of each year, at the district school-

house, if there be one, or if there be none, or more than one, then at a place to be designated by the board of directors. Special school elections shall be called and conducted in the manner provided for calling and conducting annual elections. [Amended by act of Mar. 1, 1901; L. 1901, p. 47; amendment, approved Mar. 14, 1903; L. 1903, p. 184.]

§ 2423. Voters—Qualifications—Registration—Challenge.

Every person, male or female, over the age of twenty-one years, who shall have resided in the school district for thirty days immediately preceding any school election, and in the state one year, and is otherwise, except as to sex, qualified to vote at any general election, shall be a legal voter at any school election, and no other person shall be allowed to vote: Provided, That registration for purposes of school election shall not be required except in cities of ten thousand or more inhabitants. Persons offering to vote may be challenged by any legally qualified school elector of the district, and one of the judges of election shall thereupon, before receiving his vote, administer to the person challenged an oath in substance as follows: "You do swear (or affirm) that you are a citizen of the United States, or have declared your intention to become such; that you are twenty-one years of age, according to your information and belief, and that you have resided in this district thirty days next preceding this election, and in the state one year, and that you have not voted before on this day." If he shall refuse to take the oath, his vote shall be rejected. Any person guilty of illegal voting shall be punished as provided in the general election laws of the state. [Amendment, approved Mar. 9, 1899; L. 1899, p. 323.]

§ 2435. School warrants, illegal, validated by vote.—The statute (Laws 1897, p. 411, § 135), providing that illegal school warrants which had been validated by a vote of the school district should be paid, in case they had not been taken up by the issuance of funding bonds, only by a special tax levied for the purpose from

year to year, and that the current revenues arising from the general school tax and fines should be applied exclusively to current expenses, is in no sense void as impairing the obligation of contracts: State ex rel. Dunn v. Dorsey, 19 Wash. 120, 52 Pac. 1065.

§ 2442. Special Meetings, may be Called When.

Any board of directors may, at its discretion and shall, upon a petition of the majority of the legal voters of their district, call a special meeting of the voters of the district, to determine the length of time in excess of the minimum length of time prescribed by law that school shall be maintained in the district during the school year; to determine whether or not the district shall purchase any schoolhouse site or sites, and to determine the location thereof; or to determine whether or not the district shall build one or more schoolhouses; or to determine whether or not the district shall maintain one or more free kindergartens; or to determine whether or not the district shall sell any real or personal property belonging to the district, borrow money or establish and maintain a school district library. [Amendment, approved Mar. 19, 1901; L. 1901, p. 381.]

§ 2445. Penalties for Violation of Code of Instruction.*Disclosing Questions in Examination.*

Any member of the state board of education, any employee of the state of Washington, any county superintendent or any employee of his office, who shall directly or indirectly disclose any question or questions prepared for the examination of teachers or of eighth grade pupils, or any teacher or other person connected with the instruction of or the examination of eighth grade pupils, who shall, before the time appointed for the use of the questions in the examination of such pupils, disclose the questions, or make known their character, or who shall directly or indirectly assist any such eighth grade pupil to answer any question submitted, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than one hundred nor more than five hundred dollars. Said fine shall be turned over to the county treasurer of the county in which it [is] collected, and shall be by him transmitted to the state treasurer, who shall place the same to the credit of the current school fund of the state.

[§ 2445 repealed by act of Mar. 16, 1903; L. 1903, p. 325.]

§ 2446. Neglect of County Superintendent.

If any county superintendent fails to make a full and correct report to the superintendent of public instruction of all statements required by him, or if he shall fail to file with the superintendent of public instruction a full and correct annual report within ten days after the time prescribed by law for filing said report he shall forfeit the sum of fifty dollars from his salary, and the board of county commissioners are hereby authorized and required to deduct therefrom the sum aforesaid upon the information from the superintendent of public instruction that such reports have not been made.

§ 2447. Failure to Account for Fines Collected.

Any officer or person collecting or receiving any fines, forfeitures or other moneys belonging to the schools of the state of Washington, or belonging to the school fund of any county or school district in this state, and refusing or failing to pay over the same, as required by law, shall forfeit double the amount so withheld, and interest thereon at the rate of five per cent per month during the time of so withholding same; and it shall be a special duty of the county superintendent of schools to supervise and see that the provisions of this section are fully complied with, and report thereon to the county commissioners semi-annually or oftener. Such fines and penalties, when collected, shall be turned over to the county treasurer and by him transmitted to the state treasurer, who shall place the same to the credit of the current school fund of the state.

§ 2448. Directors, Failure to Provide for Teaching Hygiene.

Upon complaint in writing being made to any county superintendent by any district clerk, or by any head of a family, that the board of directors of the district of which said clerk shall hold his office, or said head of family shall reside, have failed to make provisions for the teaching of hygiene or have failed to require it to be taught, with special reference to the effects of alcoholic

drink, stimulants and narcotics upon the human system, as provided by law, in the common schools of such districts, it shall be the duty of such county superintendent to investigate at once the matter of such complaints, and if found to be true, he shall immediately notify the county treasurer of the county in which such school district is located, and after the receipt of such notice, it shall be the duty of such county treasurer to refuse to pay any warrants drawn upon him by the board of directors of such district subsequent to the date of such notice and until he shall be notified to do so by such county superintendent. Whenever it shall be made to appear to the said county superintendent and he shall be satisfied that the board of directors of such district are complying with the provisions of law in this matter, and are causing physiology and hygiene to be taught in the public schools of such district as hereinbefore provided, he shall notify said county treasurer, and said treasurer shall thereupon honor the warrants of said board of directors.

§ 2449. County Superintendent, for Same Neglect.

Any county superintendent of common schools who shall fail or refuse to comply with the provisions of the preceding section shall be liable to a penalty of one hundred dollars, to be recovered in a civil action in the name of the state, in any court of competent jurisdiction, and the sum recovered shall go into the state current school fund; and it shall be the duty of the prosecuting attorneys of the several counties of the state to see that the provisions of this section are enforced.

§ 2450. Failure of District Clerk to Make Reports.

In case the district clerk fails to make the reports as by law provided, at the proper time and in the proper manner, he shall forfeit and pay to the district the sum of twenty-five dollars for each and every such failure. He shall also be liable if, through such neglect, the district fails to receive its just apportionment of school moneys, for the full amount so lost. Each and all of said forfeitures shall be recovered in a suit brought by the county superintendent or by any citizen of such district, in the name of and for the benefit of such district, and all moneys so collected shall be paid over to the county treasurer and shall be by him placed to the credit of the general fund of the district to which it belongs.

§ 2451. Failure to Surrender Records to Successor.

Any school officer who shall refuse or fail to deliver to his qualified successor all books, papers, records and moneys pertaining to his office, or who shall willfully mutilate or destroy any such property, or any part thereof, or who shall misapply moneys intrusted to him by virtue of his office, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be punished by a fine not to exceed one hundred dollars; said fine, when collected to be turned over to the county treasurer and by him transmitted to the state treasurer, who shall place the same to the credit of the current school fund of the state.

§ 2452. Teachers, Neglect.

Any teacher who willfully refuses or neglects to enforce the course of study or the rules and regulations required by the state board of education, or

by any other lawful authority, shall not be allowed by the directors any warrant for salary due until said teacher shall have complied with said requirements.

Any teacher who shall maltreat or abuse any pupil by administering any undue punishment, or who shall inflict punishment on the head or face of a pupil, shall be deemed guilty of a misdemeanor, and upon conviction thereof before any court of competent jurisdiction shall be fined in any sum not exceeding one hundred dollars. Said fine, when collected, shall be turned over to the county treasurer and by him transmitted to the state treasurer, who shall place the same to the credit of the current school fund of the state.

In addition to other causes for the revocation of teachers' certificates as provided by law, any teacher failing to attend the annual institute held in the county in which he is employed, or the annual joint institute held by the county in which he is employed and another county or other counties, as provided in section 99 of the Code of Public Instruction of the state of Washington, unless on account of sickness, or for other good and sufficient reasons satisfactory to the superintendent of public instruction, may upon complaint of the superintendent of the county in which he is employed to teach have any certificate he may hold forfeited by order of the superintendent of public instruction: Provided, That said forfeiture shall be duly published after the said teacher shall have been given opportunity to present his reasons for such nonattendance, and after final action thereon.

§ 2453. For Insulting Teacher.

Any parent, guardian or other person, who shall insult or abuse a teacher in the presence of his school, or anywhere on the school grounds or premises, shall be deemed guilty of a misdemeanor and be liable to a fine of not less than ten dollars nor more than one hundred dollars, and said fine shall be turned over to the county treasurer, and by him remitted to the state treasurer, who shall place the same to the credit of the current school fund of the state.

§ 2454. Disturbing School Session.

Any person who shall willfully disturb any school or school meeting shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not more than fifty dollars. Said fine, when collected, shall be turned over to the county treasurer and by him transmitted to the state treasurer, who shall place the same to the credit of the current school fund of the state.

§ 2455. False Reports as to Attendance.

Any teacher, principal or superintendent who shall knowingly report, cause to be reported, or permit to be reported, the presence of any pupil or pupils at school, when such pupil or pupils were absent, or when school is not in session, shall forfeit his certificate or subject it to revocation by the superintendent of public instruction, and the same shall not be restored or a new one granted within one year after such forfeiture or revocation: Provided, That if the teacher, principal or superintendent shall be the holder of a state certificate,

life diploma or normal school diploma, it shall be the duty of the state board of education to declare such forfeiture or revocation.

§ 2456. Defacing and Injuring School Property.

Any pupil who shall cut, deface or otherwise injure any schoolhouse, furniture, fence or outbuilding thereof, or any book or books belonging to the district library, shall be liable to suspension and punishment, and the parent or guardian of such pupil shall be liable for damages, on complaint of the teacher or of any director or other person residing in the district; and when such damages shall have been collected they shall be turned over to the county treasurer and by him placed to the credit of the school district sustaining such damages.

§ 2457. Violation of Law Respecting Vivisection and Dissection in Schools.

Any person violating the provisions of chapter xvi, Laws of 1897, entitled "An act to prevent vivisection and regulate dissection in the schools of the state of Washington, except medical and dental schools, or the medical department of any school, and providing a penalty therefor," approved February 17, 1897, shall upon conviction thereof, be deemed guilty of a misdemeanor, and be fined in any sum of not less than fifty nor more than one hundred dollars. Said fine, when collected, shall be turned over to the county treasurer, and by him transmitted to the state treasurer, who shall place the same to the credit of the current school fund of the state.

§ 2457. Penalty for nonattendance.— Under the school law of 1897, as amended in 1899, no authority is vested in the superior judge to adjudge such parent or guardian guilty of contempt for failure to

comply with an order to place a child in school, since the only penalty the statute imposes is to declare the offense a misdemeanor punishable by fine: *State v. McDonald*, 25 Wash. 122, 64 Pac. 912.

§ 2458. Text-books, Unauthorized Use of.

Any district using text-books other than those prescribed by the state board of education or by other lawful authority, or any district failing to comply with the course of study prescribed by the state board of education or by other lawful authority, or any district in which warrants are issued to a teacher not legally qualified to teach in the common school of the said district, shall forfeit twenty-five per cent of their school fund for that or the subsequent year, and it is hereby made the duty of the county superintendent to deduct said amount from the apportionment to be made to any district failing in either or all of the above requirements, and the amounts thus deducted shall revert to the general school funds of the state, and the county treasurer shall return the same to the state treasurer for reapportionment.

§ 2459. Forfeiture of School Fund.

No school district shall be entitled to receive any apportionment of school moneys which shall not have maintained school for the minimum time required by law during the preceding school year: Provided, That any new district formed by the division of an old one and which new district shall have maintained at

least one month's school during the preceding school year, as shown by the last annual report of the county superintendent on file in the office of the superintendent of public instruction, shall be entitled to its just share of school moneys when the time that school was maintained in the old district before division, and in the new one after division, shall be equal to at least the minimum time required by law in the old district: Provided, further, That if any school district has heretofore failed to receive apportionment of state school funds because of a failure to hold school the time required by law, and there are unpaid warrants drawn on the general funds of said district for maintenance of school prior to the said failure, a special tax shall be levied on the property of the district, the proceeds of which tax shall be applied to the payment of its indebtedness.

§ 2460. Repeal.

Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 of this act shall be known and cited as chapter eleven (11), of the Code of Public Instruction of the State of Washington, said Code of Public Instruction being chapter cxviii of the Session Laws of 1897, approved March 19th, 1897, and the sections above named shall be substituted for and shall supersede sections 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174 and 175 of the said Code of Public Instruction.

Sections 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174 and 175 of the Code of Public Instruction, said Code being chapter cxviii of the Laws of 1897, approved March 9th, 1897, and all other laws and parts of laws in conflict with the provisions of this act are hereby repealed.

An emergency exists and this act shall take effect immediately. [Approved Mar. 16, 1903; L. 1903, p. 325.]

[§ 2461 repealed by act of Mar. 16, 1903; L. 1903, p. 325.]

§ 2463. Compulsory Attendance—Enforced by Judge of Superior Court.

Any parent or guardian, who, after being notified by the county school superintendent of the provisions of the law relative to children attending school, shall further refuse or neglect to send such child to school, shall upon complaint of the superintendent, be summoned before the judge of the superior court, who shall have power to remove any child, if an orphan, who fails to attend school, as required by law, and place it in the care of some other person who will be likely to send such child to school, or if the child be under the care of a parent or parents, then said judge shall have power, upon the complaint of the county school superintendent, to summon such child and such parent or parents before him, and if he shall, upon inquiry, find that said child has not already attained a reasonable proficiency in the common school branches for the first eight years outlined in the course of study for common schools for the state of Washington, he shall issue an order commanding such parent or parents to place such child in school, if school be then in session, or immediately

when school shall resume, if school be not in session, or appear before him and show cause for the neglect or refusal so to do. [Amended by act of 1899; L. 1899, p. 324; amendment, approved Mar. 19, 1901; L. 1901, p. 381.]

§ 2468. Examination of Pupils.

It shall be the duty of the superintendent of public instruction at such times as he may deem advisable, but not oftener than three times each year, to prepare questions for use in the examination of the pupils of the schools of this state completing the grammar school course of study; to prescribe uniform rules and regulations for the conduct of such examinations, and to grant certificates of graduation to pupils successfully passing such examinations according to the standard prescribed by the state board of education: Provided, That such certificate shall entitle the holder thereof to entrance into any high school of the state without further examination: Provided, further, That nothing in this act shall be construed as compelling boards of directors or boards of education to admit nonresident pupils without tuition charge.

For the purpose of examining and grading the manuscripts of pupils taking the examinations mentioned in section one (1) of this act, the county superintendent of common schools may, when in his judgment the interest of the schools of the county demands it, appoint for one year, four persons, who, with the county superintendent, shall constitute a county board of examiners for the examination of pupils of the common schools of the county desiring grammar school certificates of graduation: Provided, That no person shall be eligible for appointment as a member of said board who does not at the time of his appointment hold a valid teacher's certificate in full force and effect under the laws of the state of Washington: Provided, further, That the county superintendent may appoint assistant examiners who shall conduct such examinations of pupils according to the rules and regulations of the superintendent of public instruction, and, within three days, transmit the manuscripts to the county superintendent: Provided, further, That assistant examiners shall receive for their services only such compensation as the board of county commissioners shall deem proper.

It shall be the duty of the said board of grammar school examiners to meet at the county seat at the call of the county superintendent for the purpose of examining and grading the manuscripts of pupils taking such examinations under the direction of any assistant examiner or of the county superintendent. No questions shall be used in such examination except those prepared by the superintendent of public instruction as provided in section one (1) of this act: Provided, That the state board of education may prescribe a special course of reading to be done by pupils in the last year of the grammar school course, as a requisite to their receiving certificates of graduation.

It shall be the duty of the county superintendent to report to the superintendent of public instruction, within ten days after any meeting of the county board of education, the names of all pupils successfully passing any examination, as herein provided, together with their respective standings or grades in

the several prescribed subjects and such other facts relating to said pupils or said examination as the superintendent of public instruction may require.

County examiners appointed by the county superintendent shall receive three dollars per day for the time actually employed in the examinations herein provided for; such compensation shall be paid out of the current expense fund of the county: Provided, That no examiners shall receive pay for attendance upon more than three meetings of said board in any one year, nor for more than four days at any one of such meetings.

That chapter xlix of the Session Laws of 1901, entitled "An act providing for county boards of grammar school examiners, prescribing manner of appointment, term of office, duty and compensation of such boards," approved March 6th, 1901, be and the same is hereby repealed. [Approved Mar. 16, 1903; L. 1903, p. 312.]

Repealed: Chap. 231, Laws '07.

§ 2469. Schools Maintained by United States—Compulsory Attendance at.

That whenever the government of the United States or the state of Washington shall erect, or cause to be erected and maintained, a school for general educational purposes within the state of Washington, and the expense of the tuition, lodging, food and clothing of the pupils therein is borne by the United States or the state of Washington, it shall be compulsory on the part of every parent, guardian or other person in the state of Washington having control of a child or children between the ages of five and eighteen years, eligible to attend said school, to send such child or children to said school for a period of nine months each year, or during school for a period of nine months each year, or during the annual term, unless such child or children is or are excused from such attendance by the principal or superintendent of said school, upon it being shown to the satisfaction of said principal or superintendent that the bodily or mental condition of such child or children has been and is such as to prevent his, her or their attendance at school, or application at study for the period required, or that such child or children is or are taught in the public schools, private schools, or other schools, or at home in such branches as are usually taught in the public schools: Provided, That in case the government of the United States or the state of Washington does not make provision for the free transportation of said child or children to and from their homes to said school, then he, she or they shall not be liable to the provisions of this act, unless they reside less than ten miles from said school.

Duties of Principals and Superintendents.

It shall be the duty of all principals or superintendents of the school or schools mentioned in this act, before attempting to enforce the provisions of this act hereinafter mentioned to serve, or cause to be served, a demand for the attendance of certain children, naming them, and also designating the school to which their attendance is required, upon the parent, guardian or other person having charge of said child or children as may be eligible to attend said school over which he has charge, and a copy of this act; and such parent, guardian or other person having charge of said child or children shall have ten days to either

deliver said child or children at said school, or to the principal or superintendent thereof, or furnish satisfactory proof that the bodily or mental condition of said child or children does not admit of attendance.

Penalties for Failure of Parents and Guardian.

If at the expiration of ten days after such notice or demand the parents, guardian or other persons having charge of said child or children shall have failed or refused to comply with this act, the principal or superintendent shall cause a demand to be made upon such parent, guardian or other person for the amount of the penalty hereinafter provided; and if such parent, guardian or person shall neglect or refuse to pay the same within five days after making said demand, the superintendent or principal shall commence proceedings in the name of the state for the recovery of the fine hereinafter provided before any court having jurisdiction: Provided, That nothing in this act shall apply to any child or children who is or are actually and necessarily compelled to labor for the support of such parent.

Fines—Disposal of.

Any parent, guardian or other person having control or charge of any child or children, failing to comply with the provisions of this act shall be liable to a fine of not less than five dollars nor more than twenty-five dollars, for the first offense, nor less than ten dollars nor more than fifty dollars for the second and each subsequent offense, besides the cost of collection.

All fines collected under the provisions of this act shall be paid into the county treasury, the same to be placed to the credit of the general school fund.

All acts and parts of acts in conflict with this act are hereby repealed. [Approved Mar. 12, 1903; L. 1903, p. 107.]

§ 2469a. Truant Schools Authorized.

In cities having a population of 50,000 inhabitants or more, there may be established, maintained and conducted, one or more parental or truant schools for the purpose of affording a place of confinement, discipline, instruction and maintenance of children of compulsory school age who may be committed thereto in the manner hereinafter provided.

Purchase and Renting of Buildings and Grounds.

For the purpose of establishing such school or schools, sites may be purchased and buildings constructed or premises rented in the same manner as in the case of public schools in such cities. And in addition school or schools may be established and site or sites may be purchased and buildings constructed or premises rented outside of said cities: Provided, No school or schools shall be established, or sites be purchased, any buildings constructed or premises rented which shall be distant more than ten miles from the city so establishing or erecting said schools or purchasing said site or sites: And, provided further, That no school shall be erected at or near any penal institution. And it shall be the duty of the board of directors to furnish all such schools which are by them at any place established, with such furniture, fixtures, apparatus and provisions as may be necessary for the maintenance and operation thereof.

Superintendents and Officers.

The board of directors may also employ a superintendent and all other necessary officers, agents and teachers and shall prescribe the methods of discipline and the course of instruction, and shall exercise the same powers and perform the same duties as is prescribed by law for the management of other schools.

Religious Instruction Inhibited.

No religious instruction shall be given in such school, but the board of directors may make suitable regulations so that the inmates may receive religious training, either by allowing religious services to be established in the institution, or by arranging for attendance elsewhere.

Petition for Examination and Commitment of Truants.

It shall be the duty of any truant officer or agent of such board of directors to petition, and any reputable citizen of the city may petition the superior court, to inquire into the case of any child of compulsory school age, who is not attending school, or who has been guilty of habitual truancy, or of persistent violation of the rules of the public school, and the petition shall also state the name, if known, of the father and mother of said child, or the survivor of them; and if neither father or mother of said child is living or cannot be found in the county or if their names cannot be ascertained, then the name of the guardian if there be one known, and if there be a parent living whose name can be ascertained, or guardian, the petition shall show whether or not the father or mother or guardian consents to the commitment of child to such parental or truant school. Such petition shall be verified by oath upon the belief of the petitioner and upon being filed the judge of the superior court for [shall have] such child named in the petition brought before him for the purpose of determining the application in said petition contained. But no child shall be committed to such school who has ever been convicted of any offense punishable by confinement in any penal institution.

Hearing.

Upon the filing of such petition the clerk of the court shall issue a writ to the sheriff of the county directing him to bring such child before the court; and if the court shall find that the material facts set forth in the petition are true, and in the opinion of the court such child is a fit person to be committed to such parental or truant school, an order shall be entered that such child be committed to such parental or truant school, to be kept there until he or she arrives at the age of fourteen years, unless sooner discharged in the manner hereinafter set forth. Before the hearing aforesaid, notice in writing shall be given to the parent or guardian of such child if known, of the proceedings about to be instituted, that he or she may appear and resist the same if they so desire.

Parent or Guardian, Duties of.

It shall be the duty of the parent or guardian of any child committed to this school to provide suitable clothing upon his or her entry into such school and from time to time thereafter as it may be needed, upon notice in writing

from the superintendent or other proper officer of the school. In case any parent or guardian shall refuse or neglect to furnish such clothing the same may be provided by the board of school directors, and such board may have an action, in the name of said directors, against such parent or guardian of said child to recover the cost of such clothing with ten (10) per cent addition thereto.

Rules for Government and Parole of Pupils.

The board of education of such city shall have power to establish rules and regulations under which children committed to such parental or truant schools may be allowed to return home upon parole, but to remain while upon parole in the legal custody and under control of the officers and agents of such school, and subject at any time to be taken back within the inclosure of such school by the superintendent or any authorized officer of such school except as hereinafter provided; and full power to enforce such rules and regulations to take any such child upon parole is hereby conferred upon the board of school directors. No child shall be released upon parole in less than four weeks from the time of his or her commitment nor thereafter until the superintendent of such parental or truant school shall have become satisfied from the conduct of such child that if paroled, he or she will attend regularly the public or private school to which he or she may be sent by his or her parents or guardian, and shall so certify to said board of school directors.

Reports Concerning Paroled Pupils.

It shall be the duty of the principal or other person having charge of the school to which such child so released on parole may be sent to report at least once each month to the superintendent of the parental or truant school stating whether or not such child attends school regularly, and obeys the rules and requirements of said school, and if such child so released upon parole shall be regular in his or her attendance at school and his or her conduct shall be satisfactory for a period of one year from date on which he or she was released upon parole, he or she shall then be finally discharged from the parental or truant school and shall not be committed thereto except upon petition as hereinbefore provided.

Violation of Parole—Penalty for.

In case any child released from said school upon parole as hereinbefore provided shall violate the conditions of his or her parole at any time within one year thereafter, he or she shall upon the order of the board of school directors as hereinbefore provided, be taken back to such parental or truant school and shall not be again released upon parole within the period of three months from the date of such entry; and if he or she shall violate the conditions of a second parole he or she shall be recommitted to such parental or truant school, and shall not be released therefrom on parole until he or she shall remain in such school at least one year.

Incorrigibles.

In any case where a child is found to be incorrigible and his or her influence in such school to be detrimental to the interests of the other pupils,

the board of directors may authorize the superintendent or any officer of the school to represent there [these] facts to the superior court by petition, and the court shall have power to commit such child to some reformatory institution.

Any and all laws of the state of Washington in conflict with the provisions of this act are hereby repealed. [Approved Mar. 12, 1903; L. 1903, p. 109.]

§ 2485a. University Lands—Selection and Control of.

The commissioner of public lands is hereby authorized and directed to ascertain how much land granted to the state for university purposes, by section 14 of the enabling act, approved February 22, 1889, remains unsold, and to select from the lands granted to the state of Washington by section 17 of said enabling act, for state, charitable, educational, penal and reformatory institutions, one hundred thousand acres (100,000) thereof, assigned for the support of the university of Washington by section 9 of the act of the legislature of the state of Washington, entitled "An act providing for the location, construction and maintenance of the university of Washington, and making an appropriation therefor, and declaring an emergency," approved March 4, 1893.

The lands to be selected from the lands granted by section 17 of the enabling act, shall be selected from such lands now remaining unsold and undisposed of, and so that the lands so selected shall, as nearly as practicable, in the judgment of the commissioner, equal in value, the remainder of said original grant; the estimate of values to be made on the basis of the condition of the land as originally selected by the state under said grant.

When said commissioner shall have ascertained and selected such lands as above required, he shall make a correct list by proper legal description according to the United States government surveys, of all said lands, which said list and selection shall be approved by the state board of land commission, and when so approved by the certificate of said board, the same shall be entered and recorded by said state land commissioner, in a book kept in his office for that purpose, and the copy of said list, duly certified by said land commissioner, shall be filed with the board of regents of the university of Washington, and thereafter such lands shall be known as the university lands, and shall never be sold, encumbered, or otherwise disposed of, except by and with the consent of the board of regents of the university of Washington. [Approved Mar. 14, 1903; L. 1903, p. 137.]

§ 2490. State University—Museum.

The museum of the university of Washington is hereby constituted the state museum as a depository for the preservation and exhibition of documents and objects possessing an historical value, of materials illustrating the fauna, flora, anthropology, mineral wealth, and natural resources of the state, and for all documents and objects whose preservation will be of value to the student of history and the natural sciences.

It shall be the duty of all boards, commissioners and officers acting under the authority of this state who, in the performance of their duties, may come into possession of any documents or material having an historical or scientific

value to send for preservation and exhibition all such documents or material, unless otherwise by law provided for, to the state museum constituted by section 1 of this act.

This museum may receive all such above named documents or material for preservation and exhibition from any private person under such rules and regulations as the board of regents of the university of Washington may deem proper to make for the care of the aforesaid museum.

The board of regents of the university of Washington ex officio shall have full charge and management of the state museum hereby created. [Approved Mar. 6, 1899; L. 1899, p. 40.]

§ 2519. Supervision of Experiment Station at Puyallup.

That the operation and conduct of the agricultural experiment station heretofore established at Puyallup, Washington, shall be under the supervision and control of the board of regents of the agricultural college and school of science, and the state auditor is hereby authorized to audit all claims and, if found correct, to issue warrants upon the state treasurer in payment of bills duly authorized by said board as provided by law, and the state treasurer is hereby directed to pay the same. [Approved Mar. 13, 1899; L. 1899, p. 132.]

§ 2534. Agricultural College—Powers of Regents.

The board of regents of the agricultural college and school of science is authorized and empowered to give and execute, on behalf of the state of Washington, the bonds and other papers required by the war department for the safe-keeping of the arms and equipments loaned by the United States to the agricultural college and school of science.

An emergency exists and this act shall take effect immediately. [Approved Mar. 13, 1899; L. 1899, p. 175.]

§ 2535. Scientific School and Chemistry Building.

That the board of regents of the agricultural college, experiment station and school of science of the state of Washington is hereby authorized and directed to select and set aside for the purposes hereinafter described four full sections of land in lots of not less than forty acres each from the lands granted to the state of Washington for the establishment and maintenance of a scientific school and belonging to the agricultural college and school of science. That the entire management, control and power of disposition of said four sections of land be and hereby are vested in the board of regents of the agricultural college, experiment station and school of science and subject to the provisions of this act.

Sale of Land Appropriated to.

The said board of regents may by a majority aye and nay vote, at any regular or special meeting said vote to be entered in the minutes, proceed to sell said land or the valuable material thereon, or such portion thereof as they may see fit. Such sale shall be by public auction and the land shall be offered in lots of not less than forty acres. No part of said tract shall be sold until

the value thereof shall be appraised by three appraisers to be appointed by the governor. Said appraisers shall be paid out of the general fund of the state in the same manner as the appraisers of the land commissioner's office for their services and expenses as such appraisers. Prior to said sale said board of regents shall give notice of the time, place of terms of sale by publication for four successive weeks in one or more daily papers published in the state and one or more weekly papers published in the county where said lands are situated, the cost of publication to be paid for in the same manner as the compensation of the appraisers. The place of sale shall be at the front door of the court house of the county wherein such lands are situated, and said sale may be made by the president of the board of regents, or by any other member thereof to be selected by the president. The highest bid made on the day of sale shall be accepted unless it is less than the appraised value of the parcel of land bid for or the valuable material bid for or less than ten dollars per acre, in which case the bid shall be rejected: Provided, A majority of the board of regents by an aye and nay vote, entered of record, may reject any or all bids for all or any part of the tract, and may postpone the sale until some future date, which sale shall be advertised in the same manner as the original offer to sell: Provided, further, That the successful bidder for any portion of lot or valuable material thereon must pay to the board of regents upon the date of sale, in cash, ten per cent of the amount of his bid as an evidence of good faith, and upon such payment said board or its president shall deliver to said bidder a receipt stating the amount received and that the same shall be applied on purchase price on said portion or lot or valuable material. If the successful bidder shall refuse to comply with the terms and conditions of sale as hereinafter set forth, said ten per cent deposited shall be forfeited to the state of Washington for the use of the agricultural college and school of science, and shall be, by the president of the board of regents, paid to the state treasury, who shall place the same in the scientific school fund as hereinafter provided. The successful bidder must pay to the state treasurer at least one-third cash within thirty days after the bid is awarded to him, and upon such payment shall be entitled to a certificate of purchase to be issued by the board of regents stating the amount bid, the amount paid, and the balance remaining due and when payable. The balance due shall be paid in two equal semi-annual installments with interest at six per cent per annum, the first installment to be paid in six months after the date of said certificate, and the second installment one year after said date. Upon full payment the purchaser shall receive a deed to the property, to be executed by the governor, attested by the secretary of state, with the seal of the state thereto affixed, which deed shall convey to him the title of the state to the property described in the deed. The purchaser may at any time prior to maturity pay said balance remaining due, or any part thereof, with interest to date of payment, whereupon interest on the amount paid shall cease [cease]. The state retains a lien on the property sold for all unpaid balance of the purchase price, and upon any default by the purchaser, the whole of the balance of the purchase price and interest thereon shall be due and a lien may be foreclosed and the equity of the purchase in the land barred and sold, as in suit upon foreclosure

of mortgage. In case any one making the highest bid fails to deposit with the board of regents on the date of sale ten per cent of the price bid, the board of regents may recognize the next highest bidder for such lot or parcel, upon his depositing with the board of regents ten per cent of the amount of his bid, or they may readvertise and resell said lot or parcel or valuable material, as to them may seem best, such decision to be determined by a majority vote of the board. Any purchaser at said sale shall not be entitled to the possession of the property purchased by him until specially authorized by the board of regents to take possession.

The board of regents may from time to time, as said land or valuable material or portions thereof are sold in the manner therein provided, authorize the purchasers to take possession of the land or valuable material purchased.

Fund Kept Separate.

There shall be kept by the state treasurer a separate fund to be known as the scientific school fund, into which shall be paid all moneys received from the sale of the lands, or valuable material thereon, belonging to the agricultural college and school of science, which fund shall be paid out by the state treasurer only upon warrants drawn by the state auditor, which warrants shall be based upon proper vouchers of the board of regents of the agricultural college and school of science: Provided, however, That not more than twenty-five thousand dollars (\$25,000) shall, be paid out of said special scientific school fund for the purpose of the election and equipment of a chemistry building.

Appropriation for.

There is hereby appropriated, out of the scientific school fund, the sum of twenty-five thousand dollars, or such portion thereof as may be necessary to be expended under the direction of said board of regents, for the following purposes, to wit: The sum of twenty thousand dollars for the erection of a chemistry building, and the sum of five thousand dollars for equipping the same at the agricultural college and school of science: Provided, however, That no warrants shall be drawn, at any time, on said fund, unless the cash is in said fund to pay the same. [Approved Mar. 15, 1901; L. 1901, p. 170.]

§ 2553. Normal Schools—Courses of Study—Diplomas.

The board of higher education shall prescribe the following courses of study which shall be uniform for all state normal schools of the state: (1) An elementary course of three years; (2) An advanced course of two years for those who have completed the elementary course; (3) An advanced course of two years for graduates from a four-year high school accredited by the board of higher education; (4) An advanced course of one year for graduates from colleges and universities. A student who completes the elementary course shall receive a certificate which shall entitle him to teach the common schools of the state for a period of five years. A student who completes any advanced course shall receive a diploma which shall entitle him to teach in the common schools of the state for a period of five years and upon satisfactory evidence of having taught successfully for two years during the time for which the diploma was issued,

shall receive a life diploma issued by the state board of education. Graduates from accredited high school shall receive an elementary certificate after completing one year's work of the advanced course: Provided, That no one shall receive a diploma or certificate who has not been in attendance one school year of forty weeks, and who has not given evidence of ability to teach and govern a school by not less than twenty weeks' practice teaching in the training school: Provided further, That any of the foregoing certificates or diplomas may be revoked by the state board of education for incompetency, immorality or unprofessional conduct. The board of higher education shall also prescribe uniform rules and regulations for admission to and graduation from the state normal school: Provided, That a student shall pass the examination required for a third grade teacher's certificate before entering the second year of the elementary course, and shall pass the examination required for a second-grade teacher's certificate before entering the third year of the elementary course. [Amendment, approved Mar. 9, 1899; L. 1899, p. 325.]

§ 2554. Free Text-Books—Deposit Fee—Library Fund.

The board of trustees shall provide out of funds appropriated for the purpose, such text books and supplies as are needful for successfully carrying into effect the course of study prescribed. Each student upon admission to the school may be required to pay into the library fund of the school a sum not to exceed ten dollars, one-half of which shall be applied to the support of the general library and reading room, and the remaining half shall be kept as indemnity for loss or damage of books belonging to the school in the hands of the student, and shall be returned to him after deducting such amount which may be justly charged for any loss or damage beyond reasonable wear. [Amendment, approved Mar. 9, 1899; L. 1899, p. 326.]

§ 2563. School for Defective Youth—Who Admitted.

Said school shall be free to all resident youth in the state of Washington who are idiotic, feeble minded, deaf or blind: Provided, That they are free from loathsome or contagious diseases. [Amendment, approved Mar. 6, 1903; L. 1903, p. 266.]

§ 2570. Annual Meetings.

The regular annual meeting of the board of trustees shall be held at the school on the last Wednesday of May in each year, at which meeting a president, a vice-president and a treasurer shall be elected by ballot from the board, and an auditor, not of the board, each to serve one year from the first day of July following, and a secretary, who shall be a member of the board and shall serve two years, whose duty it shall be to prepare and have ready for the examination and approval of the executive committee on the last Wednesday of November immediately preceding the meeting of the state legislature the biennial report required to be made by said board in section 1004, Vol. 1, Hill's Code, who shall

receive twenty-five dollars per annum for his services, and one member of the executive committee to serve three years from the first day of July following, and any other business proper to come before said meeting may be transacted. [Amendment, approved Mar. 13, 1899; L. 1899, p. 13; to take effect immediately.]

§ 2580. Term of.

The regular term of school shall begin on the last Wednesday in August in each year and end on the last Wednesday in May following: Provided, That the department for the idiotic and feeble minded shall be in continuous operation throughout the entire year. [Amendment, approved Mar. 16, 1903; L. 1903, p. 267, § 2.]

§ 2589. Expense of Indigent Pupils.

If it appears to the satisfaction of the county commissioners that the parents of any such defective youth within their county are unable to bear the expense of sending and returning them to said state school, it shall then be the duty of the commissioners to send and return them to and from said school or to maintain them at said school during vacation at the expense of the county. [Amendment, approved Mar. 15, 1899; L. 1899, p. 306]

§ 2591. Additional Ground for.

That there be and is hereby appropriated out of the general fund in the state treasury the sum of five thousand dollars, or so much thereof as may be necessary, for the purchase of forty acres, more or less, of land adjoining the grounds upon which is located the main building of the school for defective youth.

The state board of control is hereby authorized and empowered to negotiate and purchase said tract of land in accordance with the provisions of this act. [Approved Mar. 5, 1903; L. 1903, p. 36.]

§ 2618. Free Libraries.

By a majority vote at any election any city, village, town, school district, or other body authorized to levy and collect taxes, or by a vote of its common council any city may establish and maintain a free public library, with or without branches, either by itself or in connection with any other body authorized to maintain such library. Whenever twenty-five taxpayers shall petition, the question of providing library facilities shall be voted on at the next election or meeting at which taxes may be voted: Provided, That due public notice shall have been given of the proposed action.

Money may be Voted for.

By a similar vote money may be granted toward the support of libraries not owned by the public but maintained for its welfare and free use: Provided,

That such libraries shall be subject to the inspection of the state library commission and registered by it as maintaining a proper standard; that the commission shall certify what number of books circulated are of such a character as to merit a grant of public money; that the amount granted yearly to libraries on the basis of circulation shall not exceed ten cents for each volume of the circulation thus certified by the commission.

Taxes to Support.

Taxes, in addition to those otherwise authorized may be voted by any authority named in section one and for any purpose specified in sections one and two and shall, unless otherwise directed by such vote, be considered as annual appropriations therefor until changed by further vote and shall be levied and collected yearly, or as directed, as are other general taxes; and all money received from taxes or other sources for such library shall be kept as a separate library fund and expended only under direction of the library trustees on properly authenticated vouchers. Every free library now established, unless it is otherwise provided by the city charter of a city wherein such library is situated, and every free library hereafter established shall be maintained and managed as provided in this act.

Management and Control of.

The management and control of every public library shall be vested in a board of five trustees (unless a larger number be decided upon by vote at the time of establishment or at some subsequent annual election) who shall be elected by the legal voters; except that in cities they shall be appointed by the mayor with the consent of the city council from citizens of recognized fitness for such position. No person shall be ineligible as a trustee by reason of sex and no trustee as such shall ever receive any compensation. The first trustees shall determine by lot whose term of office shall expire each year and a new trustee shall be elected or appointed annually to serve for five years; all vacancies shall be as soon as possible filled in like manner as the members of the board are regularly chosen and in an unexpired term for the residue of the term only: Provided, That in any city in which a library is maintained under this act the city superintendent of schools or the principal of schools shall be ex officio a member of the board of trustees of such library.

Board of Trustees—Organization and Duties of.

The trustees shall immediately after taking office meet and organize by the election of one of their number president and by the election of such other officers as they may deem necessary. They shall make and adopt such by-laws, rules and regulations for their own guidance and for the government of the library as may be expedient, not inconsistent with law or this act. They shall have the supervision, care and custody of the rooms or buildings constructed, leased or set apart for the library and the exclusive control of the expenditure of all moneys collected for the library fund; and such money shall be paid out from the treasury by the proper officers upon the properly authenticated vouchers of the board of trustees without further audit. They may lease and occupy, purchase, or erect on purchased ground, an appropriate building for the library:

Provided, That in cities the purchase of such real estate or the erection of such building, if done at the public expense, be with funds expressly provided therefor by city charter, ordinance of the council, or vote of the people. They may appoint a librarian and assistants, prescribe rules for their conduct, fix their compensation and remove them from office for cause shown: Provided, That in all cities or other localities having a civil service based on competitive examination all appointments and removals shall be under the rules of such service; and in all cases where possible all appointments to library positions shall be made for ascertained fitness after examination. They shall have the power to do all other acts and things necessary to the management, custody and control of the library.

The trustees shall make an annual report at the close of each year to the city council or the proper body authorized to levy and collect taxes, stating the condition of their trust, the various sums of money received from the library fund and all other sources, how much money has been expended, the number of books and periodicals on hand, the number added during the year, the number missing or retired, the number loaned out and the general character of such loan, and such other statistics, information and suggestions as they may deem of general interest, together with their estimate of the income necessary for the proper maintenance of the library for the ensuing year: Provided, That nothing in this act shall be construed as empowering the board of trustees to incur any indebtedness as there is sufficient money in the library fund applicable to the payment thereof.

In order to avail the library of any provision of this act for state aid, the first board of trustees shall within one month at the taking of office apply to the state library commission to have the institution registered by the commission as a library under its visitation and supervision.

Reports.

Every library which receives state aid shall make to the commission an annual report verified by the oath of its presiding officer and giving such information in such form as shall be prescribed by the commission. These reports shall be summarized and transmitted to the governor by the commission together with the reports of its proceedings as required by law.

Free Use of—To Whom.

Every library established or maintained under this act shall be forever free for the use of the inhabitants of the city, town, village or district where located, subject to such reasonable rules and regulations as the trustees may find necessary in order that the library shall be of the greatest benefit to the greatest number; and they may exclude from the use of the library any person who willfully violates such rules.

Nonresidents, Use by—Conditions—Exchange of Books.

The board of trustees of any free library in this state may, under such rules and regulations as it may deem necessary and upon such conditions as may be agreed upon, allow nonresidents of the city, town, village, or district in which the library is situated to use the books therein, and may make exchanges of books

with any other public library, either permanently or temporarily; and any such board may contract with the board of commissioners of the county in which the library is situated or with the board of commissioners, village trustees, town or city council, of any neighboring county, village, town or city, to loan the books of said library to the residents of such county, village, town, or city, upon the terms agreed upon in such contract; and every such board of trustees, board of county commissioners or village trustees, town or city council is hereby empowered to make contracts for such purpose and to pay the consideration agreed upon therein to the board of trustees of such library out of the county, town, village or city treasury upon the rendering of proper accounts therefor.

Penalties for Defacing and Injuring Property.

Whoever intentionally injures, defaces, or destroys any property belonging to or deposited in any public library, reading-room, museum, or other educational institution, shall be punished by imprisonment in the penitentiary for not more than three years, or in the county jail for not more than one year, or by a fine of not more than five hundred dollars, or by both such fine and imprisonment.

Whoever willfully detains any book, newspaper, magazine, pamphlet, manuscript, or other property belonging in or to any public or incorporated library, reading-room, museum, or other educational institution, for thirty days after notice in writing to return the same, given after the expiration of the time which by the rules of such institution such article or other property may be kept, shall be punished by a fine of not less than one or more than twenty-five dollars, or by imprisonment in the jail not exceeding six months; and the said notice shall bear on its face a copy of this section.

Transfer of Property and Rights.

Any corporation, association, school district or combination of districts may, by legal vote duly approved by the state library commission, transfer the ownership and control of its library, with all its appurtenances, to any public library under the supervision of the commission and thereafter said public library shall be entitled to receive any money, books, or other property from the state or other sources, to which said corporation, association or district would have been entitled but for such transfer; and the trustee or body making the transfer shall thereafter be relieved of all responsibility pertaining to property thus transferred.

Suspension and Forfeiture of Privileges.

If the local authorities of any library supported wholly or in part by state money fail to provide for the safety and public usefulness of its books, the state library commission shall in writing notify the trustees of said library of what is necessary to meet the state's requirements, and on such notice all its rights to further grant of money or books from the state shall be suspended until the commission certifies that the requirements have been met; and if said trustees shall refuse or neglect to comply with such requirements for sixty days after service of such notice, the commission may remove them from office and thereafter all books and other library property wholly or in part paid for from state

money shall be under the full and direct control of the commission which, as shall seem best for the public interests, may appoint new trustees to carry on the library or may store it, or may distribute to other libraries the books paid for with state money.

Loan of Books.

Under such rules as it may prescribe, the state library commission may lend from any books it may have for the purpose selections of books for a limited time to any public library in this state under its visitation or supervision, or to any community not yet having established such library but having conformed to the conditions required for such loans. All the official publications of the state shall be furnished, through the state library commission, to every free public library in the state, free of charge.

Advice and Instruction.

The trustees or librarian of, or any citizen interested in, any public library in the state shall be entitled to ask from the state library commission any needed advice or instruction as to a library building, furniture and equipment, government and service, rules for readers, selecting, buying, cataloguing, shelving, or lending books, or any other matter pertaining to the establishment, reorganization, or administration of a public library. The commission may provide for giving such advice or instructions either personally or through printed matter and correspondence. The commission may, on request, select or buy books or furnish books instead of money apportioned, or may make exchanges and loans from any collection of books it may have in its possession. Such assistance shall be free to residents of this state as far as practicable; but the commission may in its discretion charge a proper fee to nonresidents, or for assistance of a personal nature or for anything which is not properly an expense to the state but which may be authorized for the accommodation of users of such library.

Funds for Support of.

The state library commission may use receipts from fees, fines, gifts from all sources, or sale of its bulletins or similar printed matter, for buying books or for any other proper expenses of carrying on its work.

Such sum as shall have been appropriated by the legislature as a fund for public library aid, shall be paid annually by the state treasurer on a warrant of the state auditor according to an apportionment to be made for the benefit of deserving free libraries by the commission in accordance with its rules and duly authenticated by it: Provided, That this money shall not be spent for any books except those approved or selected and furnished by the commission; that no locality shall share in the apportionment unless it shall raise and use for the same purpose not less than an equal amount from taxation or other local sources; that for any part of the apportionment not payable directly to the library trustees the commission shall file with the state auditor proper vouchers showing that it has been spent in accordance with law exclusively for books for free libraries or for proper expenses incurred for their benefit; and that books paid for by the state shall be subject to return to the commission whenever the library

shall neglect or refuse to conform to the regulations under which it secured them.

How Abolished.

Any library established under this act may be abolished only by a majority vote of the people at a regular annual election, ratified by a majority vote at the next annual election. If any such library be abolished, its property shall be used first to return to the state library commission, for the benefit of other public libraries in that locality, the equivalent of such sums as it may have received from the state or from other sources as gifts for public use. After such return, any remaining property may be used as directed in a vote abolishing the library; but if the entire library property does not exceed in value the amount of such gifts, it may be transferred to the commission for public use, and the trustees shall thereupon be freed from further responsibility. No abolition of a public library established under this act shall be lawful till the commission grants a certificate that its assets have been properly distributed and its abolition completed in accordance with law.

Gifts to.

All persons desirous of making gifts of money, personal property or real estate, for the benefit of a public library shall have the right to vest the title thereto in the board of trustees, to be held and controlled by the board, when accepted according to the terms of the deed of gift, devise, or bequest.

All provisions of this act shall apply equally to libraries and to combine libraries and museums, and the word library shall be construed to include reference and circulating libraries and reading-rooms.

All acts and parts of acts in conflict with this act are hereby repealed. [Approved Mar. 18, 1901; L. 1901, p. 336.]

§ 2600. State Library Commission—Distribution of Public Documents.

A state library commission is hereby created, which shall consist of the governor, the judges of the supreme court and the attorney general. In addition thereto an advisory board is likewise created which shall consist of the superintendent of public instruction, of two persons appointed by the governor upon his own initiative, and of two other persons to be appointed by the governor, one of whom shall be a person recommended by the Washington State Historical Society, and one of whom shall be a person recommended by the State Federation of Women's Clubs. This advisory board shall give advice and counsel to the state library commission and to its librarian with regard to the management and conduct of the historical branch of the state library, and of the free public and traveling departments thereof. The term of office of each member of the advisory board shall be four years. No member thereof shall receive any salary, but actual traveling expenses while engaged in the discharge of their duties shall be paid to them as are other expenses incurred by the state library commission.

§ 2601. Powers and Duties of Board.

The state library commission shall have full charge and control of the state library and of all its departments. It shall appoint a state librarian, who shall

hold office at the pleasure of the commission. The state librarian shall take an oath to be filed in the office of the secretary of state that he will support the constitution of the United States, the constitution of the state of Washington, and will faithfully discharge his duties, and shall give bond in the sum of two thousand dollars payable to the state, with two or more sureties to be approved by the state library commission, that he will perform his duties as required by law. The state librarian shall appoint two assistant librarians, by and with the advice and consent of the state library commission, who shall qualify in like manner as the librarian, and under his direction and control discharge any and all duties required by him to be discharged. The state library commission shall adopt such rules for the convenient and economical management of the state library in all its department as they deem fit.

§ 2602. Salary of State Librarian.

The state librarian shall receive an annual salary of fifteen hundred dollars, to be paid monthly, and the state auditor shall draw warrants on the state treasurer therefor. The assistant librarians shall each be paid an annual salary of such an amount as shall be fixed by the state library commission, not to exceed the sum of one thousand dollars per annum for each assistant. The state library commission may assign the assistants to different departments of the state library and graduate the salary of each as they shall deem just. The assistants' salary shall be paid at the same time and in the same manner as the salary of the state librarian.

§ 2603. Duties of State Librarian.

The state librarian, under the direction and control of the state library commission, shall:

1. Assume charge of the state library and all its branches, provide rooms therefor and adjust and arrange it in such rooms, and also provide such fixtures and fittings as shall be necessary.

2. Purchase all books, reports and maps deemed necessary or proper for the use of the library.

3. Receive and take charge of all books, reports, maps, or other documents which may be donated to said library.

4. Provide for the care and repair of the rooms, furniture, fixtures, books, reports and documents of the library.

5. Receive and distribute all public documents which he is required by law to receive and distribute.

6. Act as secretary of the state library commission and advisory board, and under the direction thereof assist in the organization or improvement of the state library or any department thereof.

7. Biennially, not more than thirty days before the meeting of the legislature, make a report to the state library commission, showing the work which has been done in all the departments of the state library and such other matters as are of interest in connection with the library work. He shall be authorized to make requisitions upon the state printing board for printing said report, and also for such other printing as may be necessary or proper in the discharge of his duties.

8. Discharge such other duties as he shall by law or the direction of the state library commission be required to discharge. All expenses incurred by him in the discharge of these duties shall be audited and allowed by the state library commission, and when ordered paid by them the state auditor shall draw his warrant upon the state treasurer for the amount thereof.

§ 2604. Additional Duties of Commission.

The state library commission shall have the absolute direction and control of the law department of the state library, the arrangement thereof, and the purchases to be made in connection therewith. The state library commission with the advice and assistance of the advisory board hereinbefore created, shall also have control of the miscellaneous department of the state library, the system of traveling libraries and the state historical department (all of which are declared to be a part of the system of the state library) and shall direct such purchases, receive such donations as may be made, and direct its policy in all particulars. The advisory board shall give particular attention to the building up of a state historical department and a system of traveling libraries, and shall give advice and counsel to all free libraries in the state, and to all communities which may propose to establish them, as to the best means of establishing and administering such libraries, the selection of good books, cataloguing, and other details of library management.

§ 2605. Place of Office—Secretary.

The state library commission and the advisory board shall have their office at the office of the state librarian. The state librarian shall act as secretary to the commission and to the advisory board, and as such secretary shall keep a record of the proceedings of the commission and advisory board, accounts of the financial transactions of the commission, and under its direction, and with the advice and assistance of the advisory board, act in organizing or improving free public libraries and in the management of the state library or any department thereof. His expenses as such secretary shall be paid as are other expenses incurred by him.

§ 2606. Duties of Printing Board as to Public Documents.

It shall be the duty of the printing board, or whoever shall have charge of the printing of the public documents of the state of Washington, to deliver such documents, when printed, immediately to the state librarian, who is declared to be the custodian thereof, except that the state printing board shall reserve one hundred copies of the reports of each state officer, which reports said printing board shall arrange in sets and suitably bind such sets in volumes and label the same "Washington Executive Documents," and shall further designate on the backs of such volumes the date of the series, the volume number, the reports contained in each volume, followed by dates showing the period covered by each report, and shall then deliver such bound sets to the state librarian. The state librarian shall be charged with all deliveries made to him, and he shall receipt therefor and immediately distribute the same as hereinafter provided, surplus copies to be classified and stored by him in some room assigned for that purpose. Surplus copies of public documents in the custody of any state officer at

the time when this act shall take effect shall be delivered by him to the state librarian, who shall receipt therefor.

§ 2607. "Public Documents" Defined.

The term "public documents" as used in this act, shall include the supreme court reports, the session laws, the legislative journals, the reports of the state officers or of any commission or commissions, board or boards of the state, or of any person or persons authorized by law to make such reports.

§ 2608. Public Documents—Records of to be Kept.

The state librarian shall keep a record of all public documents received by him, showing number of each received, the number distributed and to whom, and the number yet on hand, which record shall at all times be open to inspection. On or before the first day of January of each year he shall make a report to the state printing board showing the matters disclosed by such record since the time of making his last report, and shall biennially, in his report as state librarian, report to the governor in detail the number of volumes and pamphlets received, the number distributed and the number yet on hand, and shall call attention to any shortage or wasteful surplus, and shall make recommendations with relation thereto. The Washington state library commission, created by the act approved March 2, 1901, shall surrender to the librarian all books or documents in its possession when this act shall take effect, and the librarian shall receipt therefor and account for the same in the manner hereinbefore provided. He shall be liable on his official bond for all books and documents so received by him.

§ 2609. Distribution of Public Documents.

Upon receipt of the public documents the state librarian shall deposit six copies of each publication in the state library, and shall place forty copies in reserve for the future needs of the library and to replace loss by fire or otherwise sustained by any office or institution named in this section, and shall then distribute as follows:

1. Of the unbound volumes of reports of the state officers he shall deliver to the officer making the report as many volumes thereof as said officer may require upon the officer making a written requisition therefor showing the names and addresses of persons for whom such reports are intended.

2. Of the bound volumes of the executive documents referred to in section 2 hereof he shall deliver to the governor's office and to the governor one copy each; to the congressional library, to the university of Washington and to the agricultural college and school of science two copies each; to the normal schools of this state, and to the state, territorial, or district library of each state, territory or district one copy each; and one copy each to any foreign state or territory to which the state library commission shall require one to be sent.

3. Of the session laws he shall deliver to each executive state officer, and to each department presided over by such officer, to each department of the United States government, to each of the senators and representatives in Congress of this state, to each judge of the supreme court and to the office of each

judge, to each superior judge of the state, to each United States district judge and each United States circuit judge within this circuit, to each United States district attorney and to each United States marshal, and to each registrar and receiver of the United States land offices within this state, to each prosecuting attorney, to each assistant attorney general, to each normal school of the state, to the agricultural college and school of science, to the university of Washington, to the law department of each state, territorial or district library in the United States, to each of the district courts of Alaska, to each province of the Dominion of Canada, to the clerk of the supreme court, to the supreme court reporter, to each member of the legislature during the session at which such laws were adopted, one copy. To the clerk of each United States district court within the state, for the use of such court, five copies. To the clerk of each of the other United States district courts, and of each circuit court, within this circuit, for the use of their respective courts, three copies. To the clerk of the supreme court of the United States, for the use of such court, ten copies. To the congressional library, and to the law department of the university of Washington, six copies each. To each bar association or public library within the state, three copies. To each county auditor, a sufficient number to supply each county officer and justice of the peace within his respective county with one copy for the official use of such officers, and not otherwise. Such further distribution may be made as the state library commission shall order. The surplus copies thereof shall be sold at the actual cost price with ten per cent added and the proceeds of such sales shall be paid into the state treasury for the use of the state library fund.

4. Of the senate and house journals he shall deliver one set to each member of the legislature during the session of which it is a journal, and to each executive state officer, to each free public library in the state, to each newspaper and magazine furnished free to the state library, to each state, territorial or district library in the United States, and to each province of the Dominion of Canada, one set; three sets shall be delivered to each of the normal schools, to the agricultural college and school of science, to the university of Washington, and to the law department of the university of Washington; any sets remaining undisposed of shall be disposed of in the same manner as the surplus copies of the Session Laws.

5. Of the supreme court reports, of each volume issued one volume shall be delivered to the law department of each state, territorial or district library, and to the supreme court of each state, territory or district of the United States, to each province of the Dominion of Canada sending similar publications to the library of this state, to the clerk and each judge of the supreme court of this state, to each of the superior court judges, to the attorney general of the United States, to each United States district attorney within this state, to the attorney general and to each prosecuting attorney, to each United States district judge and each United States circuit judge within this circuit, to the general library of the university of Washington, to the agricultural college and school of science and to each of the normal schools. To the supreme court reporter two volumes shall be delivered; to the congressional library and to the

supreme court of the United States, three volumes each; to the law department of the university of Washington, six volumes; to each bar association or public library within this state, two volumes; to the clerk of the supreme court of the state and to each judge thereof (the same to remain the property of said court) one volume. The state library commission may order such further distribution as it shall deem advisable. The state library commission shall order such distribution of bulletins and documents issued by the United States or any department thereof and forward to the state library as it shall deem advisable.

§ 2610. Repeal.

An act entitled "An act to promote and establish the efficiency of free public libraries and for the purpose of establishing a state library commission and appropriating two thousand dollars for traveling library fund," approved March 2, 1901; and an act entitled "An act providing for the distribution of the public documents of the state of Washington," approved March 6, 1901, an act entitled "An act relating to the state library, and declaring an emergency," approved March 8, 1893, an act entitled "An act to provide for the publication, distribution and sale of the supreme court reports of the state of Washington, and declaring an emergency," approved February 25, 1891, and all other acts and parts of acts in conflict herewith are hereby repealed.

An emergency exists and this act shall take effect immediately. [Approved Mar. 17, 1903; L. 1903, p. 351.]

[§§ 2611, 2612, 2613, 2614, 2615, 2616, 2617 were repealed by act of 1903; L. 1903, c. 171, p. 358. §§ 12, 13.]

§ 2622. State Board of Control, Creation of.

The governor of the state shall, by and with the advice and consent of the senate appoint a bipartisan board consisting of three citizens of the state, not more than two of whom shall belong to the dominant political party, as members of a board to be known as the "state board of control." The members of said board shall hold office, as designated by the governor, for two, four and six years respectively and be removable by the governor in his discretion. Subsequent appointments shall be made as provided and, except to fill a vacancy shall be for a period of six years. The chairman of the board for each year shall be the member whose term of office first expires. All vacancies that may occur on said board while the legislature is not in session shall be filled by appointment by the governor and shall be submitted to the senate for consideration at the next session following the appointment. Each member of the said board shall receive a salary of two thousand dollars (\$2,000) per annum, and in addition shall be paid for all actual expenses incurred in discharge of his duties, said expenses not to exceed the sum of one thousand dollars per annum for each member of the said board.

§ 2622a. Oath and Bond.

Each member of the board shall, before entering upon the duties of his office, take and subscribe to an oath, before an officer qualified to administer the same, that he will faithfully perform the duties of his office according to

law, and shall furnish the state an official bond in the sum of ten thousand dollars, conditioned as provided by law, said bond to be approved by the governor and, when so approved, shall be filed in the office of the secretary of state. Two members of the board shall constitute a quorum and shall have power to transact any business for the board.

§ 2624. Duties and Powers.

The board of control shall assume its duties on April 1st, 1901, and shall have full power to manage and govern the Western Washington hospital for the insane, Eastern Washington hospital for the insane, the state penitentiary, state reform school, the state soldiers' home and the state school for defective youth, subject only to the limitations contained in this act and other acts relating to the management of the said institutions; and the said institutions shall hereafter be known by the titles herein given. The state board of audit and control and the board of trustees now charged with the control and management of the institutions named in this section, shall, on and after April 1st, 1901, have no further legal existence and the board of control created by this act, is, without further process of law, authorized and directed to assume the control and management of the said institutions, subject to the provisions of this act.

Immediately upon assuming control and management of the public institutions in accordance with the provisions of this act, the board shall secure suitable offices for the transaction of its business and shall employ a competent bookkeeper and accountant, who shall act as secretary of the board, also a stenographer and such additional help as might be required for the proper conduct of the work of the board. The salaries of the employees of the board shall be fixed by the board: Provided, That the salaries of the said employees shall not in any one year exceed the sum of two thousand dollars. The board shall cause to be kept at its office a proper and complete system of books and accounts with each institution, which shall clearly show every expenditure authorized and made thereat, the said books shall exhibit an account of all appropriations made by the legislature, and of all other funds. It shall prescribe the form of vouchers, records and the methods of keeping accounts at and by each of the institutions under its control; said vouchers, records and methods of accounts of each of the institutions to be as nearly uniform as possible. The board, or any member of the board, shall have the power to examine and check the records of the institutions at any time. The board shall also have the power to authorize its bookkeeper and accountant, or any other employee, to proceed to any of the institutions, for the purpose of examining and checking the records, taking inventory of the property of the institution, or any department thereof, or for any other purpose that in the opinion of the board might be deemed necessary. The said employee shall, while engaged in said work, receive, in addition to his salary, pay for actual expenses incurred in the discharge of the special duty, said expenses to be paid from the fund for the expenses of the board. Upon the completion of any special work provided for in this section the board shall cause the employee doing the said special work, to make a full and complete report of the said work, to the board, within ten days after the completion of the same.

It shall be the duty of the board to visit, at least once each four months, institutions under its control at which times meetings of the board shall be regularly held at the said institutions. During such visitations the board shall thoroughly inspect all of the departments of, and investigate the financial condition and management of the said institutions. For the purpose of aiding in any investigation, the board shall have the power to summon and compel the attendance of witnesses, to examine them under oath, which any member of the board shall have power to administer. Said board shall also have access to all books, papers and property material to any investigation, and may order the production of any books, papers or property material thereto. Witnesses, other than those employed by the state, shall be entitled to the same fees as in civil cases in a superior court. It shall be the duty of the board to cause the testimony so taken to be transcribed and filed in the office of the board within ten days after the same is taken, or as soon thereafter as practicable. Any person refusing or failing to obey the orders of the board issued under the provisions of this section, or to give or produce evidence when required, shall be reported by the board to the superior court or any judge thereof, and shall be dealt with by the court or judge as for contempt of court. It shall be the duty of the board to provide that each institution placed under the control of the said board by this act shall be visited by one member of the board each month. Each member shall alternate in said monthly visits of inspection.

It shall be the duty of the board to appoint a chief executive officer for each of the institutions under its control who shall devote his entire time to the duties of his office and whose title shall be "superintendent." Said appointment shall be for a term of four years: Provided, however, That at any time the superintendent of an institution may be removed by the board at its discretion.

§ 2624a. Salaries.

The salaries to be paid to the superintendents shall be fixed by the board, and shall not exceed the amounts herein indicated. Superintendents of the hospitals for the insane, not to exceed twenty-five hundred dollars (\$2,500) per annum; superintendent of state penitentiary, not to exceed eighteen hundred dollars (\$1,800) per annum; superintendent state reform school, not to exceed eighteen hundred dollars (\$1,800) per annum; superintendent state soldiers' home, not to exceed twelve hundred and fifty dollars (\$1,250) per annum; superintendent state school for defective youth, not to exceed eighteen hundred dollars (\$1,800) per annum. The superintendent of each institution shall have the power to appoint all assistants and employees required for the management of the institution placed in his charge, the number of said assistants and employees to be determined and fixed by the board. The superintendent of an institution may, at his pleasure, discharge any person therein employed. It shall be the duty of the board to investigate any and all complaints made against the chief executive officer of an institution and also against any other officer or employee of an institution if the same has not been investigated and reported upon by the superintendent to the board. The board shall have the power to remove any chief officer in accordance with the provisions of this

section and may after investigation, for good and sufficient reasons, order the discharge of any other officer or employee. The board shall fix the salaries of the officers and employees of institutions under its control, on or before the first day of July each year to be paid during the year commencing July 1st, and no change shall be made in the salaries to be paid, excepting at the time prescribed in this section.

§ 2624b. Emoluments.

The superintendent of each of the institutions under the control of the board; the assistant physicians, the steward and accountant and the chief engineer of the hospitals for the insane shall be furnished with quarters, household furniture, board, fuel and lights, for themselves and their families: Provided, That the board of control may, by unanimous vote of the full board when in their opinion any public institution would be benefited by so doing, extend this privilege to an officer at any of the institutions under the control of the board. The word "family" or "families" used in this section shall be construed to mean only the wife and minor children of an officer. Employees shall be furnished with quarters and board for themselves.

§ 2624c. Management of Property.

The board shall have the power to receive, hold and manage all real and personal property made over to them by gift, devise or bequest, and the proceeds and increase thereof shall be used for the benefit of the institution for which it is received.

The board is authorized to make its own rules for the proper execution of its powers. It shall also have the power to adopt rules and regulations for the government of the institutions placed under its control and shall therein prescribe, in a manner consistent with the provisions of this act, the duties of the persons connected with the management of the institutions.

§ 2624d. Purchase of Supplies.

The board of control is hereby empowered and required to purchase all of the supplies needed for the proper support and maintenance of the institutions placed in its charge. Said supplies to be purchased, whenever practicable, under contract, notice of the call for the same to be published in at least two newspapers of general circulation in the state for two weeks prior to the award being made. The contract shall be awarded to the lowest responsible bidder, if the price bid is a fair and reasonable one and not greater than the market value and price, and if the bid covers the kind and quality of article or articles required by the board. The board is authorized to require such security as it may deem proper to accompany the bids submitted, and shall also fix the amount of the bond or other security that shall be furnished by the person or firm to whom the contract for supplies is awarded. The board shall have the power to reject any or all bids submitted, if for any reason it is deemed for the best interest of the state to do so and readvertise in accordance with the provisions of this section. The board shall also have the power to reject the bid of any person or firm who has had a prior contract, and who did not, in the opinion of the board, faithfully comply with the same.

It shall be the duty of the superintendents of the several institutions to cause to be prepared, estimates of the supplies required for the proper conduct and maintenance of the institutions under their charge, covering the period to be fixed by the board of control, and to forward the same to the board in accordance with its directions. The board shall have the power to revise the estimates made, either as to quantity or quality, and shall make the call for supplies in accordance with the revised list, a copy of which shall be forwarded to the superintendent of the institution for which the call is made. The board shall purchase the supplies at such times and for such periods as in its judgment may be for the best interests of the institution, in accordance with the provisions of this act.

No superintendent or other officer or employee of an institution shall have the authority to purchase any article for the use of the institution of which they have charge or in which they are employed, except in case of extreme necessity, and when the superintendent shall consider such article absolutely necessary; that all supplies shall be purchased by the board of control in accordance with the provisions of this act. It shall be the duty of the superintendent of each institution to furnish to the board on or before the fifth day of each month a full and complete statement showing the supplies or articles purchased by him, upon his authority, without the authority of the board and to state therein the reasons for the purchases being made. No member of the board of control, employee in the office of the board, or officer or employee of any institution under the control of the board, shall be directly or indirectly interested in the purchase of supplies, or any other contract entered into by and for any of the institutions under the control of the board, and if so interested he shall forfeit his office, such contract shall be void, and such person shall be liable to the state upon his official bond for all damages sustained.

§ 2624e. Employment of Architects.

The power is also vested in the board to employ the services of competent architects for the preparation of plans and specifications for new buildings, or for repairs, changes or additions to the buildings already constructed, to employ competent persons to superintend the construction of new buildings or repairs, changes or additions to the buildings already constructed, to call for bids and award contracts for the erection of new buildings, or for repairs, changes or additions to buildings already constructed: Provided, however, That the board shall have the right to proceed with the erection of any new building, or repairs, changes or additions to any buildings already constructed, employing thereon the labor of the inmates of the institution, when in their judgment the improvements can be made in as satisfactory a manner and at a less cost to the state by so doing. In calling for bids for improvements to be made the board shall follow the provisions of section 10 of this act, which provisions are hereby made to and shall cover all calls made and contracts awarded under this section.

§ 2624f. Offices and Record.

The board shall keep at its office, accessible only to members of the board, the secretary and proper clerks except by the consent of the board, a record

showing the residence, sex, age, nativity, occupation, civil condition and date of entrance or commitment of every person, patient, inmate or convict in the several institutions governed by the board, the date of discharge of every person from the institution and whether such discharge is final: Provided, That in addition to this information the superintendent of the hospitals of the insane shall also state the condition of the person at the time of leaving the institution. The records shall also indicate if the person is transferred from one institution to another and to what institution; and if dead, the date and cause of death. This information shall be furnished to the board by the several institutions, and also such other obtainable facts as the board may from time to time require, not later than the fifth day of each month for the month preceding, by the chief executive officer of each institution, upon blank forms which the board may prescribe.

§ 2624g. Reports.

The board of control shall, on or before the first Tuesday after the convening of each regular session of the legislature, make to the governor and legislature a full report of all matter herein prescribed showing the condition of all the said institutions, the cost of conducting the same during the period covered by the report, and shall also include therein a statement of the work and expenses of the board. The board shall also incorporate in its report, suggestions respecting legislation for the benefit of the several institutions under its care, and also make estimates of the appropriations that in its opinion are necessary for the maintenance of the institutions and for buildings, betterments or other improvements. The said report shall also contain the biennial report made by the chief executive officers of the several institutions to the board or so much thereof as in its opinion might be deemed proper. Also a statement showing the dates of visitations made by the board or any member thereof to the several institutions. There shall also be published in the report a full and complete list of the officers and employees of the board and of the institutions under the control of the board, showing the annual salary paid to each officer and employee.

§ 2624h. Removal from Office.

Any member or officer of the board of control, or any other officer or employee of the institutions under the control of the board, who, by solicitation or otherwise, exercises his influence, directly or indirectly, to influence other officers or employees of the state to adopt his political views or to favor any particular person or candidate for office, shall be removed from his office or position by the proper authorities.

§ 2624i. Repeal.

Existing laws relating to the institutions referred to in this act, which are not inconsistent with the provisions of this act, shall remain in force, and all acts or parts of acts in conflict or inconsistent with this act are hereby repealed.

An emergency exists and this act shall take effect immediately. [Approved Mar. 16, 1901; L. 1901, p. 249.]

§ 2631. Soldiers' Home—Establishment of.

There shall be established in this state an institution under the name of the Washington Soldiers' Home which institution shall be a home for honorably discharged Union soldiers, sailors, marines, soldiers of the Spanish-American war, and also members of the state militia disabled in the line of duty, and who are bona fide citizens of this state. [Amendment, approved Mar. 18, 1901; L. 1901, p. 344.]

§ 2632. Who Admitted to.

All honorably discharged Union soldiers, sailors, marines, soldiers of the Spanish-American war, and also members of the state militia disabled while in the line of duty, may be admitted to the home provided for in the last preceding section of this chapter, under such rules and regulations as may be adopted by the board of audit and control: Provided, Such applicants are bona fide citizens of this state.

Whereas an emergency exists this act shall be in force from and after its passage. [Amendment, approved Mar. 18, 1901; L. 1901, p. 344.]

§ 2632a. Indian Soldiers Admitted.

Any man who served in the Indian war in the territory of Washington in 1855-56 as a volunteer, messenger, in the transportation service or otherwise in behalf of the territory of Washington or of the United States, shall hereafter be admitted to the Washington soldiers' home, maintained at Orting in Pierce county, Washington, upon terms similar to those under which the veterans of other wars are now admitted to that institution, and submitting to the commandant and the board having charge of the said institution sufficient evidence to satisfy them that he has served in the said war as hereinbefore provided. [Approved Mar. 18, 1901; L. 1901, p. 348.]

[§§ 2638-2639, repealed by act of 1903; L. 1903, p. 154.]

§ 2638. Creating a Commission to Acquire Whitman Mission.

That the governor be and he is hereby authorized to appoint a commission of three qualified electors of the state to serve as commissioners for the period of four years, and until their successors are appointed and qualified, which shall comprise what shall be known as the Whitman park commission. That such commission so appointed shall serve without compensation, but before entering on the duties of their office, shall each give a bond to the state of Washington, with sufficient surety, in the sum of one thousand (\$1,000.00) dollars, conditioned for the faithful performance of their duties as such commission.

That said commission shall be and they are hereby authorized to accept from the present holders thereof a free conveyance of the land on which stands the Whitman monument in Walla Walla county, said land being described as follows: Beginning at the northwest corner of the land owned by the Whitman and Eells Memorial Church, a corporation, on the Whitman donation claim in the said county of Walla Walla, running thence north on the prolongation of the west line of the land of said church two hundred and fifty (250) feet; thence

at right angles easterly six hundred and twenty-five (625) feet; thence at right angles southerly to the north side of the present county road; thence west along the north side of said county road to the southeast corner of the said land owned by the Whitman and Eells Memorial Church, thence north on the east line of the said land of said church to the northeast corner of said land, thence west along the north line of said land of said church to the place of beginning. That such conveyance shall be made to the state of Washington. !

That when the legislature provides sufficient funds such commissioners be and they are hereby authorized to purchase at a price not exceeding \$60 per acre not to exceed twenty (20) acres of land adjacent to the land hereinbefore described, which additional land so purchased shall include the ground where the Whitman Mission formerly stood.

That such commissioners shall be appointed within sixty (60) days after this act goes into effect and that said commissioners shall within sixty days after their appointment meet in the city of Walla Walla and organize by the election of a president and secretary and shall thereafter meet from time to time as they shall elect and decide. They shall keep a record of the accounts and proceedings of such commission and shall make, on or before the 1st day of January of each year a report to the governor of their accounts and proceedings. The governor is hereby authorized to fill any vacancy that may occur on said board. [Approved Mar. 18, 1901; L. 1901, p. 346.]

§ 2645. Burial of Indigent Soldiers.

It shall be the duty of the board of county commissioners in each of the counties of this state to designate some proper authority other than that designated by law for the care of paupers and the custody of criminals, who shall be caused to be interred the body of any honorably discharged soldier, sailor or mariner, who served in the army or navy of the United States during the late rebellion or in the war with Mexico, or in any of the Indian wars that occurred in the state of Oregon and the territory that is now the state of Washington, and the wives or widows of such soldiers, sailors or marines, who shall hereafter die without leaving means sufficient to defray funeral expenses; but the expenses of such funeral shall not, in any case, exceed the sum of thirty-five dollars. If the deceased has relatives or friends who desire to conduct the burial, and who are unable to pay the charges thereof, then the said expenses, not to exceed the sum of thirty-five dollars, shall be paid to them or their representatives, by the county treasurer, upon due proof of the death and burial of any person provided for by this section, and proof of expenses incurred. [Amendment, approved Mar. 13, 1899; L. 1899, p. 160.]

§ 2645a. Provisions Respecting Burial of Washington Volunteers.

It shall be the duty of the adjutant general of this state to make suitable provision for the interment of the remains of all deceased Washington volunteers returned to this state by the United States government, and whenever possible, he shall communicate with the relatives or friends of such deceased volunteers, and when practicable be governed by their desires as to the disposition of such

remains. In case the adjutant general should fail to receive directions from relatives or friends of any deceased volunteer it shall be his duty to inter such remains in the state cemetery at Orting, Washington, or such other public cemetery as in his judgment may be deemed advisable.

Appropriation for.

For the purpose of carrying out the provisions of this act there is hereby appropriated out of the general funds of the state treasury, not otherwise appropriated, the sum of ten thousand dollars, or so much thereof as may be necessary.

An emergency exists and this act shall take effect immediately. [Approved Mar. 13, 1899; L. 1899, p. 176.]

§ 2654b. Acceptance of Donations to Insane Asylums.

That the superintendent of either of the asylums for the insane of this state is authorized to accept and receive from any person or association desiring to make a payment or contribution of money for the assistance or support of such asylum any sum so offered to said superintendent and to issue to such person under his hand and seal a receipt for any amount so paid or contributed.

On the first day of January of each year and every three months thereafter, the superintendent of each of the asylums for the insane shall report to the state treasurer the names and addresses of all persons that have during the preceding three months paid any money to such superintendent as contemplated in section 1 of this act, and said superintendent shall with such report, remit to the state treasurer all moneys theretofore received.

The state treasurer shall credit all moneys received under the provisions of this act to a fund which shall be known as the "Fund of special contributions for the insane," and shall also keep a book alphabetically arranged in which shall be entered the name and address of all persons contributing to said fund and the date and amount of any such payments, as reported by the superintendents of the hospitals for the insane.

It is hereby declared to be the policy, and to be understood, that all moneys accumulating in the said "Fund of special contributions for the insane" shall only be appropriated or used for the benefit and maintenance of the hospitals for the insane of the state of Washington. [Approved Mar. 16, 1903; L. 1903, p. 192.]

§§ 2721-2727. Juvenile offenders.—A municipal court being, under the constitution, an inferior court, and, under the statute having concurrent jurisdiction with justice courts only, such municipal court has no jurisdiction to commit a child between the ages of eight and sixteen years to the reform school, but is merely authorized to send such child, when found guilty of any crime, mendicancy, vagrancy or incorrigibility to the superior court for further trial: *In re Barbee*, 19 Wash. 306, 53 Pac. 155.

The commitment of boys between the ages of eight and fifteen years to the re-

form school on the ground of vagrancy, under Ballinger's Code, section 2724, is unwarranted, when there was no testimony before the court showing they were guilty of vagrancy, or mendicancy, or incorrigibility, or had been convicted of crime: *State v. Rasch*, 24 Wash. 332, 64 Pac. 531.

§ 2736. Penitentiary—Duties of warden and board of trustees to prosecute suits.—Under Laws 1891, page 355, section 7, providing that all suits necessary to protect the rights of the state in matters or property connected with the penitentiary and its management shall be prosecuted in the name of the board of state penitenti-

ary directors, such directors, acting in their official capacity, may bring an action in their own names for the benefit of the state upon the official bond of the warden

to recover on account of his defalcation of public funds: *Nye v. Kelly*, 19 Wash. 73, 52 Pac. 528.

§ 2741. Fixing Warden's Salary.

The board having control and supervision of the state penitentiary is authorized hereafter to fix and determine the salary of the warden of the state penitentiary, and such salary shall be fixed with a view of equalizing the same with the salaries paid in this state to the superintendents of other institutions having equally responsible duties to perform: Provided, That said salary shall not be more than eighteen hundred dollars per year.

All acts and parts of acts in conflict with this act are hereby repealed. [Amendment, approved Mar. 13, 1899; L. 1899, p. 125.]

§ 2747a. Employment of Convicts at Penitentiary.

All convicts confined in the state penitentiary at Walla Walla may be employed under authority of the state board of control, under charge of the superintendent of the penitentiary, or of such other persons in the employ of the state as the state board of control shall direct, in the crushing, preparation or handling of rock or other materials for roads or streets. Such labor shall be performed at such place or places in this state as the said state board of control shall direct.

Said state board of control shall have power and authority to purchase out of the revolving fund of the state penitentiary all necessary materials, tools and implements and to do all things necessary to carry out the spirit and intent of this act.

Said state board of control shall have authority to sell and dispose of such crushed rock or other materials for roads and streets in such manner and for such price as they shall deem most advantageous for the state.

All moneys derived from the sale of such crushed rock or other road materials shall be paid into the revolving fund of the state penitentiary. [Approved Mar. 16, 1903; L. 1903, p. 264.]

§ 2806a. Police and Sanitary Regulations—Creation of Office of Fire Marshal.

The deputy insurance commissioner shall be ex-officio fire marshal of this state, and shall receive for his services the compensation hereinafter provided for. All necessary forms, circulars and blanks, together with such reports as may be required by the provisions of this act, shall be furnished at the expense of the state.

Deputies.

The chief of the fire department of every city having a paid or organized volunteer fire department, the city marshal or chief of police of every incorporated town or city having no paid or organized volunteer fire department, and the justices of the peace outside of incorporated towns or cities shall be ex-officio deputy state fire marshals within their respective jurisdictions. They shall investigate the cause, origin [origin] and circumstances of every fire oc-

curing within their respective jurisdictions by which property has been destroyed, and especially making investigation as to whether such fire was the result of carelessness or design. Such investigation shall be begun within two days, not including Sunday, of the occurrence of such fire, and the fire marshal shall have the right to supervise and direct such investigation whenever he deems it expedient or necessary. The officer making such investigation of fires shall forthwith notify said fire marshal, and shall within one week of the occurrence of the fire, furnish to the said fire marshal a written statement of all the facts relating to the cause and origin of the fire, the value of the property destroyed and the amount of insurance, if any carried thereon, and such other information as may be called for by the blanks provided by the said fire marshal. The state fire marshal shall keep in his office a record of all fires occurring in the state, together with all facts, statistics and circumstances, including the origin of the fires, which may be determined by the investigations provided by this act; such record shall at all times be open to the public inspection.

Duties of.

The said state fire marshal shall, when in his opinion further investigation is necessary, take or cause to be taken the testimony on oath of all persons supposed to be cognizant of any facts or to have means of knowledge in relation to the matter as to which an examination is herein required to be made, and shall cause the same to be reduced to writing; and if he shall be of the opinion that there is evidence sufficient to charge any person with the crime of arson or the crime of incendiarism, he shall cause such person to be arrested and charged with such offense, and shall furnish to the prosecuting attorney of the county in which the offense was committed, all such evidence, together with the names of witnesses and all the information obtained by him, including a copy of all pertinent and material testimony taken in the case.

Powers of.

The state fire marshal and deputy fire marshals shall each have the power of a trial justice for the purpose of summoning and compelling the attendance of witnesses before them or either of them to testify in relation to any matter which is by provision of this act a subject of inquiry and investigation. Said state fire marshal and deputy fire marshals may also administer oaths and affirmations to any persons appearing before them or either of them, to testify in relation to any matter which is by the provisions of this act a subject of inquiry and investigation. State fire marshal and deputy fire marshals may also administer oaths and affirmations to any persons appearing as witnesses before them; and false swearing in any matter or proceeding aforesaid shall be deemed perjury and shall be punished as such. Said state fire marshal and his subordinates shall have authority at all times of day and night, in the performance of the duties imposed by the provisions of this act, to enter upon and examine any building or premises where any fire has occurred and other buildings and premises adjoining or near the same. The state fire marshal and the deputy fire marshals, upon complaint of any person having an interest in any building or property adjacent to the complainants, shall have the right at all reason-

able hours, for the purpose of examination to enter into and upon all buildings and premises within their jurisdiction. Whenever any of said officers shall find in any building or upon any premises combustible material or inflammable conditions dangerous to the safety of said building or premises, they shall order the same to be removed or remedied, and such order shall be forthwith complied with by the owner or occupant of said building or premises: Provided, however, That if the said occupant or owner shall deem himself aggrieved by such order he may within three days appeal to the state fire marshal, and the cause of the complaint shall be at once investigated by the direction of the latter, and unless by his authority the order is revoked, such order shall remain in force and be forthwith complied with by said owner or occupant. Any owner or occupant of buildings or premises failing to comply with the orders of the authorities above specified shall be punished by a fine of not less than ten dollars nor more than fifty dollars for each day's neglect.

Penalties.

Any officer referred to in section 2 of this act who neglects to comply with any of the requirements of this act shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars.

Salaries.

The deputy fire marshals shall receive a salary of two and one-half dollars per day for the time actually spent in investigating and reporting upon fires occurring within their jurisdictions. All claims for compensation to deputy fire marshals shall be examined by the state fire marshal, and if found correct, shall be certified by him to the state auditor who shall draw his warrants upon the state treasurer who is hereby directed to pay said warrants out of moneys herewith appropriated.

Appropriation for.

For the biennial term ending March 31, 1903, there is hereby appropriated for the per diem salary of deputy fire marshals a sum not exceeding two thousand dollars, payable as provided in section 7 of this act.

Reports.

The state fire marshal shall submit annually on the first day of January, a full and accurate report to the governor of this state, giving a detailed statement of his official acts, and proceedings in connection with the duties made incumbent upon him by the provisions of this act. [Approved, Mar. 18, 1901; L. 1901, p. 328.]

§ 2808. Insurance—Certificate of Authority to do Business.

The insurance commissioner shall issue to any insurance company, corporation or association his certificate of authority to transact business in this state under the following conditions:

First. If a company, corporation or association organized under the laws of this state, when he is satisfied that the provisions of this act in relation to such company, corporation or association has been complied with.

Second. If a company, corporation or association organized in any of the United States or territories, when he is satisfied that the company, corporation or association has net assets or paid up and unimpaired capital of one hundred thousand dollars.

Third. If a foreign company, corporation or association, when he shall be satisfied that the company, corporation or association has made a deposit with the insurance commissioner of this state, or with the proper officers of some other state, of not less than \$200,000.00 in the bonds of the United States, the bonds of any state in the United States, the bonds of any city outside of the state of Washington having a population exceeding one hundred thousand inhabitants, or the bonds of any of the counties, school districts or cities of this state, in trust for the benefit of its policy holders in the United States, and that the said two hundred thousand dollars is unimpaired and free from all liabilities: Provided, That warrants of the state of Washington may also be accepted in lieu of the bonds above enumerated: Provided further, That no bonds or warrants shall ever be accepted as a deposit whose market value is less than par. [Amendment, approved Mar. 15, 1899; L. 1899, p. 327.]

§ 2817a. Marine Insurance Agents, Providing for Licensing.

The insurance commissioner is hereby authorized to issues licenses to marine insurance agents or brokers to write or solicit marine insurance for companies that have not complied with the insurance laws of this state.

Before a license such as is provided for in section 1 of this act shall be issued, the person, firm or corporation applying for such license shall: 1. Pay a fee to the insurance commissioner in the sum of fifty dollars (\$50). 2. Execute a bond to the state in the sum of [one] thousand dollars (\$1,000) conditioned upon their complying with the provisions of this act.

Such person, firm or corporation shall file a sworn statement on or before the 15th day of January of each year showing the total risks written, the total premiums collected and the total losses paid upon risks written by such person, firm or corporation; and upon such total premiums, less losses paid policy holders, such person, firm or corporation shall pay to the insurance commissioner by March 1st of each year a tax of two per cent.

On or before January 15th of each year such person, firm or corporation as may have been licensed under the provisions of this act shall file a statement with the insurance commissioner giving the names and the home officers [offices] of all companies or associations for which such person, firm or corporation has written or solicited business during the year ending December 31, preceding; and the books or other record of any such person, firm or corporation shall at all times be open to the inspection and examination of the insurance commissioner.

Penalties.

Any person, firm or corporation soliciting marine insurance or acting, or assuming to act, as an agent or broker for any person, company, corporation or association engaged in doing marine insurance business, without having a

license as provided for in this act, shall be deemed guilty of a misdemeanor and may be punished by a fine in any sum not less than two hundred and fifty dollars (\$250) nor more than one thousand dollars (\$1,000) in the discretion of the court.

Agent or Broker, Who is.

Any agent or broker through whom, in whole or in part, any insurance company, association, individual or individuals shall negotiate, issue or deliver any policy of insurance, shall be deemed an agent of such company, association, individual or individuals, for the purpose of service of process in any action brought on said policy in the courts of this state or the courts of the United States therein. And any company, association, individual or individuals negotiating, issuing or delivering a policy of marine insurance through any agent or broker in this state shall be deemed by the act of issuing such policy to have appointed such agent or broker its, his or their agent for the purpose of receiving service of process in any suit or action brought on said policy in the courts of this state or of the United States therein.

Repeal.

All acts and parts of acts inconsistent or in conflict with the provisions of this act are hereby repealed.

An emergency exists and this act shall take effect and be in force immediately upon its passage and approval by the governor. [Passed Mar. 14, 1901; L. 1901, p. 389.]

§ 2819. Insurance companies—Deposit of securities with state treasurer—Extra compensation.—The state treasurer is not entitled to compensation in addition to his salary for services in disposing of the securities deposited with him by a foreign

insurance company as trustee for the policy holders, when the act imposing that duty on him makes no provision for additional compensation: *Young v. Millett*, 19 Wash. 486, 53 Pac. 823.

§ 2833. Face of Policy to be Paid, When.

Whenever any policy of insurance shall be hereafter written or renewed insuring real property, or any building or structure erected thereon or connected therewith, and the property insured shall be wholly destroyed, without criminal fault on the part of the insured, or his assigns, the amount of insurance written in such policy shall be taken conclusively to be the true value of the property when insured, and the true amount of the loss and measure of damages when destroyed. In case there is a partial destruction of the property insured, no greater amount shall be collected than the injury sustained: Provided, That the insurer shall have the option to repair, rebuild or replace the property lost or damaged with other of like kind and quality if he gives notice of his intention so to do within twenty days after the receipt of notice of loss: Provided, Such insurer shall, within thirty days from the receipt of notice above, commence such rebuilding or replacing and shall diligently prosecute the same to completion, and shall pay to the insured the reasonable rental value of the premises, with the buildings thereon, from the date of loss to the date of such completion. [Amendment, approved Mar. 15, 1899; L. 1899, p. 332.]

§ 2835. Deputy Commissioner.

The commissioner shall appoint a deputy whose salary is hereby fixed at fifteen hundred dollars per annum, and in the absence of the commissioner or his inability from any cause to exercise the powers and discharge the duties of his office, the powers and duties of the office shall devolve upon the deputy. [Amendment, approved Mar. 15, 1899; L. 1899, p. 328.]

§ 2835a. Fees for Issuing License.

The annual fee for licensing every person acting as agent for any company, corporation or association during a life, accident, sick benefit or indemnity business of any character whatever, shall be and hereby is fixed at five dollars. All licenses provided for in this act shall expire on the thirty-first day of December succeeding the date of issue. [New section enacted 1899; L. 1899, c. cxlvi, p. 328, § 3.]

§ 2837. Fire Insurance Companies—Annual Tax.

All insurance companies, corporations or associations now doing business in this state, or that may hereafter do business in this state, must file with the insurance commissioner annually, on or before the fifteenth day of February in each year, a statement, under oath, stating the amount of all premiums received by said companies, corporations or associations during the year ending December thirty-first preceding in this state, and the amounts actually paid policy holders during the same time, and shall pay into the state treasury, through the insurance commissioner, a tax of two per cent on all such premiums collected, less the amount of losses actually paid policy holders. Said tax shall be due and payable on the first day of March succeeding the filing of the statement provided for herein. Any organization failing or refusing to render such statement and to pay the required two per cent tax on premiums, for more than thirty days after the time so specified, shall be liable to a fine of twenty-five dollars for each additional day of delinquency, and the taxes may be collected by distraint and the fine recovered by an action to be instituted by the insurance commissioner in the name of the state in any court of competent jurisdiction; and the insurance commissioner shall revoke and annul the certificate of authority of such delinquent organization until such taxes and fine, should any be imposed, are fully paid and notice given thereof to the said insurance commissioner. [Amendment, approved Mar. 15, 1899; L. 1899, p. 333.]

§ 2840. Overhead Writing Prohibited.

It shall be unlawful for any insurance company, corporation or association doing business in the state of Washington to write, place or cause to be written or placed any policy or contract for indemnity for insurance on property situated or located in the state of Washington except through or by the duly authorized and licensed agent or agents of such insurance company, corporation or association residing and doing business in the state of Washington. At the time of the filing of the annual statement of every such company with the insurance commissioner there shall be attached thereto the affidavit of the president,

manager or chief executive officer in the United States that this section has not been violated. [Amendment, approved Mar. 15, 1899; L. 1899, p. 332.]

§ 2841c. Regulating Mutual Fire Insurance Companies.

Any number of persons, residents of this state, not less than fifty (50), may form an association or corporation for the purpose of mutual protection of its members against loss by fire and any such association or corporation that is conducted for the mutual protection and relief of its members only and not for profit shall be exempt from all other insurance laws of this state.

Law Governing Organization.

Such corporation shall be organized substantially in the manner prescribed in an act providing for the incorporation of social, charitable and educational associations, approved March 2, 1895.

May Issue Policies, When.

No policy of insurance shall be issued by any such corporation until not less than \$50,000 of insurance, in not less than fifty separate risks, have been subscribed and entered upon its books.

Limit of Risks.

No single risk for more than one thousand (\$1,000) dollars shall be taken by any such corporation until its membership is sufficiently large so that an assessment on all its members, equal to one-fourth of the standard premium specified in each certificate or policy of insurance, would cover the risk and no single risk shall be taken for more than two thousand (\$2,000) dollars until the membership is sufficiently large so that an assessment on all its members, equal to one-eighth of the standard premium specified in each certificate, would cover the risk taken.

No risk shall be assumed nor certificate issued by any such corporation on property on which the annual rate charged by standard insurance companies would be more than three per cent.

No certificate shall be issued for more than two-thirds the estimated cash value of the property insured.

Assessments—Limitation of.

All assessments levied shall be at the rate of fifteen (15) per cent of the amount of the annual premium charged by standard insurance companies upon similar risks, which annual premiums shall be ascertained before the issuance of each certificate and specified therein as the standard premium, and such rate, when so ascertained, shall be binding on each member of the corporation. If one assessment shall not pay the losses of such company, a sufficient number of assessments shall be made to pay the losses remaining unpaid at the time of such assessment.

Expenses—Limitation of.

The total expenses of such corporations incurred in the management of their business shall not exceed the money received with applications for membership and insurance.

Withdrawals.

Any member of such corporation may withdraw at any time by surrendering his policy or certificate of insurance to the company and by giving five days' notice of his intention to withdraw, and paying all assessments due or pending at the time of his withdrawal.

Voting—Annual Meetings.

Each company organized and operating under the provisions of this act shall hold an annual meeting of its members, at which each member shall be entitled to vote in the election of its directors or trustees, but no officer of the company shall be allowed to vote the proxy of any other member.

Reports.

It shall be the duty of the president and secretary of each corporation doing business under the provisions of this act annually, on or before the fifteenth day of January, to prepare and deposit in the office of the insurance commissioner of this state, a statement certified under the oath of said president and secretary, exhibiting the following facts and items: First, The amount of the property at risk on the 31st day of December, next preceding; the amount of risks added during the previous year; the amount of risks canceled, withdrawn or terminated during the year and the largest amount of insurance carried on any single risk. Second, The amount of cash received with the applications for insurance during the year, the amount received from assessments levied, the amount received from all other sources and the total income. Third, The amount paid for losses during the year, the amount paid officers and directors and office help, the amount of all other expenditures and the total expenditures. Fourth, The amount of cash on hand, the amount and nature of all other assets and the total assets. Fifth, The amount of losses reported during the year and unpaid, the amount and the nature of all other liabilities and the total liabilities.

Mode of Organization.

Any mutual fire insurance company desiring to organize and incorporate in this state must file with the state insurance commissioner a copy of its articles of incorporation, together with a statement, certified under the oath of its president and secretary, showing the amount of insurance and the number of risks pledged upon its books and when, in the opinion of the commissioner, such articles of incorporation and statement meet the requirements of this act, the commissioner shall grant such corporation a license to do business.

Insolvency.

Whenever it shall appear to the insurance commissioner, from its annual report or otherwise, that the solvency of any mutual company doing business under this act is impaired, or that the provisions of this act are being violated, or upon the written request, signed by ten members of such company, he may immediately make examination of such company, and for that purpose he shall have access to all books and papers of the company and shall have power to administer oaths and to examine the various officers thereof as to all matters pertaining to the business of such company, and also such other witnesses as

may be material or important. If the unpaid losses of the company amount to twenty-five cents on each \$100.00 insurance actually in force, or if the laws of the state are being violated by the company, the commissioner shall order the laws complied with and require all losses to be paid within sixty days. If such company shall fail to comply with such requirements, the commissioner shall revoke its license to do business until all liabilities shall have been paid in full.

Fees.

Each insurance company doing business under this act shall pay to the insurance commissioner: For filing articles of incorporation, \$5.00; for annual license to do business in the state, \$5.00; for filing each annual statement, \$5.00; for annual license of each agent or solicitor of such company, \$2.00. When the insurance commissioner shall make an examination of any mutual company, under the provisions of this act, the actual traveling expenses of such commissioner, while engaged in making such examination, shall be paid by such company. [Approved Mar. 14, 1899; L. 1899, p. 264.]

§ 2481d. Beneficiary Societies—Authorization.

A fraternal beneficiary association is hereby declared to be a corporation, society or voluntary association formed or organized and carried on for the sole benefit of its members and their beneficiaries, and not for profit. Each association shall have a lodge system and must maintain one or more lodges within the state with ritualistic form of work and representative form of government and shall make provisions for the payment of benefits in case of death, and may make provisions for the payment of benefits in case of sickness, temporary or permanent physical disability, either as the result of disease, accident or old age: Provided, The period in life at which payment of physical disability benefits on account of old age commences, shall not be under seventy (70) years subject to their compliance with its constitution and laws. The fund from which the payment of such benefits shall be made, and the fund from which the expenses of such association shall be defrayed, shall be derived from assessments or dues collected from its members. Payment of death benefits shall be to the families, heirs, blood relatives, affianced husband or affianced wife of, or to persons dependent upon the member. Such associations shall be governed by this act and shall be exempt from the provisions of other laws of this state and no law hereafter passed shall apply to them unless they be expressly designated therein. Any such fraternal beneficial association may create, maintain, disperse [disburse] and apply a reserve or emergency fund in accordance with its constitution or by-laws. [Amendment, approved Mar. 14, 1903; L. 1903, p. 145.]

Existing Companies may Continue Business.

All fraternal, beneficiary associations organized under the laws of this or any other state, province or territory, now doing business in this state, may continue such business: Provided, That they hereafter comply with the provisions of this act regulating annual reports and the designation of the commissioner

of insurance as the person upon whom process may be served as hereinafter provided.

Foreign Companies—Authority of.

Any such association coming within the description, as set forth in section 1 of this act, organized under the laws of any other state, province or territory, and not now doing business in this state, shall be admitted to do business within this state when it shall have filed with the commissioner of insurance a duly certified copy of its charter and articles of association, and a copy of its constitution or laws, certified to by its secretary or corresponding officer, together with an appointment of the commissioner of insurance of this state as a person upon whom process may be served as hereinafter provided; and provided that such association shall be shown to be authorized to do business in the state, province or territory in which it is incorporated or organized, in case the laws of such state, province or territory, shall provide for such authorization; and in case the laws of such state, province or territory do not provide for any formal authorization to do business on the part of such association, then such association shall be shown to be conducting its business in accordance with the provisions of this act, for which purpose the commissioner of insurance of this state may personally, or by some person to be designated by him, examine into the condition, affairs, character and business methods, accounts, books and investments of such association at its home office, which examination shall be at the expense of such association, and shall be made within thirty days after demand thereof, and the expense of such examination shall be limited to \$200.

Annual Certificate of Parent State.

Any association doing business under this act shall be permitted to do business upon filing annually with the commissioner of insurance of this state, the certificate of authorization of the insurance department of the state, province or territory in which it is incorporated or organized: Provided, however, in case of failure to file said certificate by any such association, or in case the commissioner of insurance shall deem it necessary, he shall have power to examine, either personally or by some person designated by him, into the condition, affairs, character, business methods, accounts, books and investments of such association, at its home office, which examination shall be at the expense of the association, the amount thereof shall not exceed two hundred dollars in associations with no reserve or emergency fund, and four hundred dollars for associations with a reserve or emergency fund.

Reports.

Each such association doing business in this state shall, on or before the first day of March of each year, make and file with the commissioner of insurance of this state a report of its affairs and operations during the year ending on the thirty-first day of December, immediately preceding, which annual report shall be in lieu of all other reports required by any other law. Such reports shall be upon blank forms to be provided by the commissioner of insurance, or may be printed in pamphlet form, and shall be verified under oath by

the duly authorized officers of such association, and may be published, or the substance thereof, in the annual report of the commissioner of insurance under a separate part entitled "Fraternal Beneficiary Associations," and shall contain answers to the following questions:

1. Number of certificates issued during the year, or members admitted.
2. Amount of indemnity affected thereby.
3. Number of losses or benefit liabilities incurred.
4. Number of losses or benefit liabilities paid.
5. The amount received from each assessment for the year.
6. Total amount paid members, beneficiaries, legal representatives, or heirs.
7. Number and kind of claims for which assessments have been made.
8. Number and kind of claims compromised or resisted, and statement of reasons.
9. Does the association charge annual or other periodical dues or admission fees?
10. How much on each one thousand dollars, annually or per capita, as the case may be.
11. Total amount received, from what sources, and the disposition thereof.
12. Total amount of salaries paid to officers.
13. Does the association guarantee, in its certificates, fixed amounts to be paid, regardless of amount realized from assessments, dues, admission fees and donations?
14. If so, state amount guaranteed, and the security of such guarantee.
15. Has the association a reserve fund?
16. If so, how is it created, and for what purpose, the amount thereof, and how invested?
17. Has the association more than one class?
18. If so, how many, and the amount of indemnity in each.
19. Number of members in each class.
20. If voluntary, so state, and give date of organization.
21. If organized under the laws of this state, under what law, and at what time; giving chapter and year and date of passage of the act.
22. If organized under the laws of any other state, province or territory, state such fact and the date of organization, giving chapter and year and date of passage of the act.
23. Number of certificates of beneficiary membership lapsed during the year.
24. Number in force at beginning and end of year; if more than one class, number in each class.
25. Names and addresses of its president, secretary and treasurer, or corresponding officers.

Additional Information.

The commissioner of insurance is authorized and empowered to address any additional inquiries to any such association in relation to its doings or condition, or any other matter connected with its transaction relative to the

business contemplated by this act, and such officers of such association as the commissioner of insurance may require shall promptly reply in writing, under oath, to all such inquiries.

Provisions for Service of Process.

Each such association now doing business or hereafter admitted to do business within this state and not having its principal office within this state, and not being organized under the laws of this state, shall appoint, in writing, the commissioner of insurance and his successors in office to be its true and lawful attorney, upon whom all lawful process in any action or proceeding against it must be served, and in such writing shall agree that any lawful process against it which is served on said attorney shall be of the same legal force and validity as if served upon the association, and that the authority shall continue in force so long as any liability remains outstanding in this state. Copies of such certificate, certified by said commissioner of insurance, shall be deemed sufficient evidence thereof, and shall be admitted in evidence with the same force and effect as the original thereof might be admitted. Service upon such attorney shall be deemed sufficient service upon such association.

When legal process against any such association is served upon said commissioner of insurance, he shall immediately notify the association of such service by letter, prepaid and directed to its secretary or corresponding officer, and shall within two days after such service forward in the same manner a copy of the process served on him to such officer. The plaintiff in such process so served shall pay to the commissioner of insurance at the time of such service a fee of three dollars which shall be recovered by him as part of the taxable costs, if he prevails in the suit. The commissioner of insurance shall keep a record of all processes served upon him, which record shall show the day and hour when such service was made.

Permits.

The commissioner of insurance of this state shall, upon the application of any association having the right to do business within this state, as provided by this act, issue to such association a permit in writing, authorizing such association to do business within this state, for which certificate and all proceedings in connection therewith, such association shall pay to said commissioner the fee of five dollars.

Certificate of Organization to be filed.

Any number of persons, not less than ten, residents of the state of Washington, and citizens of the United States may form a fraternal beneficiary society, order or association, for the purposes set forth in this act, by filing in the office of insurance commissioner a declaration signed by each of the incorporators and duly acknowledged before an officer authorized under the laws of this state to take acknowledgments, and shall therein express their intention of forming a fraternal beneficiary society, order or association for beneficiary purposes, which said declaration shall also contain the proposed name of the

society, order or association, which shall not be the same as, nor too closely resemble, the name of any other society, order or association, organized under the laws of this state or doing business in this state; the mode and manner in which the powers granted by this act are to be exercised; the place of doing business fully and clearly defined; the limit as to age of applicant or beneficiary membership, which shall not exceed fifty years, and that medical examinations are required of members for life benefits; the name and official titles of the officers, trustees, directors, representatives or other persons, by whatsoever name or title designated, who are to have and exercise the general control and management of its affairs and all its funds, who shall be elected after the first year by representatives chosen by subordinate lodges, councils or bodies, or grand lodges, grand councils or bodies, as the laws of the society, order or association may provide, who shall be members of such society, order or association. Such first officers of any such society, order or association, shall not hold office longer than one year unless re-elected by a majority of the members thereof.

Agents—Employment of Limited.

Such associations shall not employ paid agents in soliciting or procuring members, except in the organization or building up of subordinate bodies or granting members inducements to procure new members.

Payment of Premiums by Beneficiary Prohibited.

No contract with any such association shall be valid when there is a contract, agreement or understanding between the member and the beneficiary that the beneficiary or any person for him shall pay such member's assessments or dues, or either of them.

Benefits Exempt from Levy.

The money or other benefit, charity, relief or aid to be paid, provided or rendered by any association authorized to do business under this act, shall not be liable to attachment by trustee, garnishee or other process, and shall not be seized, taken, appropriated or applied by any legal or equitable process, or by operation of law, to pay any debt or liability of a certificate holder or of any beneficiary named in a certificate, or any person who may have any right thereunder.

Mortality Table Adopted.

No association not admitted to transact business within this state prior to the passage of this act shall be incorporated or given a permit or certificate of authority to transact business within this state, as provided for by this act, unless it shall first show that the mortuary assessment rates, provided for in whatever plan of business it has adopted, are not lower than is indicated as necessary by the following mortality table:

FRATERNAL CONGRESS MORTALITY TABLE.

Age.	Number living.	Number dying.	Probability of dying.	Age.	Number living.	Number dying.	Probability of dying.
20	100,000	500	.005000	60	69,801	1,588	.0227504
21	99,500	501	.005035	61	68,213	1,681	.0246434
22	98,999	502	.005071	62	66,532	1,778	.0267240
23	98,497	503	.005107	63	64,754	1,880	.0290830
24	97,994	505	.005158	64	62,874	1,985	.0315711
25	97,489	507	.005201	65	60,889	2,094	.0343904
26	96,982	510	.005259	66	58,795	2,206	.0375206
27	96,472	513	.005318	67	56,589	2,318	.0409620
28	95,959	517	.005388	68	54,271	2,430	.0447753
29	95,442	522	.005469	69	51,834	2,539	.0489767
30	94,920	527	.005552	70	49,302	2,645	.0536489
31	94,398	533	.005647	71	46,657	2,744	.0588122
32	93,860	540	.005753	72	43,913	2,832	.0644912
33	93,320	548	.005872	73	41,061	2,909	.0708113
34	92,772	557	.006004	74	38,172	2,999	.0777795
35	92,215	567	.006149	75	35,203	3,009	.0854757
36	91,648	578	.006307	76	32,194	3,026	.0939927
37	91,070	591	.006490	77	29,168	3,016	.1034010
38	90,479	606	.006698	78	26,152	2,977	.1138345
39	89,873	622	.006921	79	23,175	2,905	.1253506
40	89,251	640	.007171	80	20,270	2,799	.1385163
41	88,611	660	.007448	81	17,471	2,659	.1521951
42	87,961	683	.007766	82	14,812	2,485	.1677694
43	87,298	708	.008113	83	12,327	2,280	.1849599
44	86,560	734	.008490	84	10,047	2,050	.1855707
45	85,826	761	.008867	85	7,997	1,800	.2250844
46	85,065	790	.009287	86	6,197	1,539	.2483460
47	84,275	822	.009754	87	4,658	1,277	.2741520
48	83,453	867	.0102698	88	3,381	1,023	.3025732
49	82,596	894	.0108238	89	2,358	788	.3341815
50	81,702	935	.0114440	90	1,570	579	.3687898
51	80,767	980	.0121337	91	991	404	.4076690
52	79,786	1,029	.0128970	92	587	264	.4497445
53	78,757	1,083	.0137511	93	323	161	.4984520
54	77,674	1,140	.0146767	94	162	89	.5493827
55	76,584	1,202	.0157054	95	73	44	.6027397
56	75,332	1,270	.0168587	96	29	19	.6551724
57	74,062	1,342	.0181200	97	10	7	.7000008
58	72,720	1,418	.0194994	98	3	3	1.0000000
59	71,302	1,501	.0210513				

Meetings Without the State Authorized.

Any such association, organized under the laws of this state, may provide for the meetings of its legislative or governing body in any other state, province or territory, wherein such association shall have subordinate bodies, and all business transacted at such meeting shall be valid in all respects, as if such meetings were held within this state, and where the laws of any such association provide for the election of its officers by votes to be cast in its subordinate bodies, the votes so cast in its subordinate bodies in any other state, province or territory, shall be valid as if cast within this state.

Penalties.

Any person, officer, member or examining physician who shall knowingly or willfully make any false or fraudulent statement or representation in or with reference to any application for membership, or for the purpose of obtaining any money or benefit in any association transacting business under this act, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than \$100, nor more than \$500, or imprisonment in the county jail for not less than thirty days nor more than one year, or both, in the discretion of the court; and any person who shall willfully make a false statement

of any material fact or thing in a sworn statement as to the death or disability of a certificate holder in any such association for the purpose of procuring payment of a benefit named in the certificate of such holder, and any person who shall willfully make any false statement in any verified report or declaration under oath required or authorized by this act, shall be guilty of perjury, and shall be proceeded against and punished as provided by the statutes of this state in relation to the crime of perjury.

Any such association refusing or neglecting to make the report, as provided in this act, shall be excluded from doing business within this state. Said commissioner of insurance must within twenty days after failure to make such report, or in case any such association shall exceed its powers or shall conduct its business fraudulently, or shall fail to comply with any of the provisions of this act, give notice in writing to the attorney general, who shall immediately commence an action against any such association to enjoin the same from carrying on any business. And no injunction against any such association shall be granted by any court, except on application by the attorney general, at the request of the commissioner of insurance, whether the state or a member or other party seeks relief. No association so enjoined shall have authority to continue business until such report shall be made, or overt act or violations complained of shall have been corrected, nor until the cost of such action be paid by it, provided the court shall find that such association was in default, as charged, whereupon the commissioner of insurance shall reinstate such association, and not until then shall such association, be allowed to again do business in this state. Any officer, agent or person, acting for any association or subordinate body thereof, within this state, while such association shall be so enjoined or prohibited from doing business pursuant to this act, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by a fine not less than \$25 nor more than \$200, or by imprisonment in the county jail for not less than thirty days nor more than one year, or both such fine and imprisonment, in the discretion of the court.

Any person who shall act within this state as an officer, agent, or otherwise, for any association which shall have failed, neglected or refused to comply with, or shall have violated any of the provisions of this act, or shall have failed or neglected to procure from the commissioner of insurance proper certificate of authority to transact business, as provided for by this act, shall be subject to the penalty provided in the last preceding section for the misdemeanor therein specified.

Orders Exempted from Provisions of Act.

Nothing contained in this act shall be construed to affect the Independent Order of Odd Fellows as they now exist nor any grand, subordinate lodge or other body of Free and Accepted Masons, nor the grand, nor any subordinate lodge of the Knights of Pythias, exclusive of the Endowment Rank, nor any association not working on the lodge system which limits its certificate holders to a particular class or to the employment of a particular town or city, designated firm, business house or corporation. [Approved Mar. 18, 1901; L. 1901, p. 356.]

§ 2841e. Regulating Fire Insurance Companies and Their Agents.

Licenses to Agents—When Issued.

No license shall hereafter be issued to any fire insurance company, corporation or association, permitting said fire insurance company, corporation or association to do business in this state until such fire insurance company, corporation or association shall file with the insurance commissioner of this state its written agreement that it will not accept any application for fire insurance upon, nor will it write, issue or deliver any policy of fire insurance covering any property located or situated within the state of Washington except through a citizen of this state, resident herein, and who shall be a duly appointed agent of such fire insurance company, corporation or association, and licensed by the insurance commissioner of this state as agent of such fire insurance company, corporation or association to solicit and write fire insurance.

Any fire insurance company, corporation or association holding a license issued by the insurance commissioner of this state prior to the date that this act shall take effect shall, within sixty days after this act shall take effect, file with the said insurance commissioner a like written agreement as that prescribed by section 1 of this act, as a condition precedent for the continuance of the business of such fire insurance company, corporation or association in this state, and if such fire insurance company, corporation or association shall fail so to do within said time, said insurance commissioner shall forthwith revoke the license of such fire insurance company, corporation or association.

Business Must be Done Through Resident Agents.

No fire insurance company, corporation or association licensed to do business in this state shall accept any application for fire insurance upon nor shall it write, issue or deliver any policy of insurance covering property located or situated within this state except through a duly appointed agent of such fire insurance company, corporation or association, who is a citizen of this state, resident herein and licensed as agent of such fire insurance company, corporation or association by the insurance commissioner of this state to write and solicit insurance for such fire insurance company, corporation or association. The license of any such fire insurance company, corporation or association which shall accept any application for insurance upon or which shall write, issue or deliver any policy covering any property located or situated in this state in violation of this section, shall be revoked by the commissioner of this state.

Revocation—Increased Fee.

No fire insurance company, corporation or association, the license of which shall be revoked for violation of this act after its passage, shall be again licensed to do business in this state until it shall have paid into the state treasury the sum of \$500.00 as a license fee.

No person shall write or solicit fire insurance upon any property located or situated in this state, nor shall any person deliver any policy of fire insurance upon any property located or situated in this state, unless such person be a duly authorized agent of some fire insurance company, corporation or association holding a license granted by the insurance commissioner of this state, au-

thorizing it to do business in this state, and unless such person be duly licensed by such insurance commissioner as a fire insurance agent authorized to write and solicit fire insurance in this state. Any person violating this section shall be guilty of a misdemeanor and shall be fined in a sum not exceeding \$50, or imprisonment in the county jail not exceeding thirty days.

Agents Licensed When.

No person shall be licensed as a fire insurance agent authorized to solicit or write fire insurance until each company, corporation or association represented by such person shall have paid a license fee as prescribed in this section. The annual license fee for an agent's license authorizing the solicitation and writing of fire insurance in this state shall be two dollars for each company represented by any person, firm or corporation.

Penalty on Insured.

Any owner of property situated or located in the state of Washington at the time of being insured who shall insure his property in a company, corporation or association not authorized to do business in this state, shall be held liable to the state of Washington for twenty-five per cent of the gross premiums paid to any such unauthorized company. The insurance commissioner is hereby authorized to institute actions against any person violating the provisions of this section, and for the recovery of the penalty herein provided for.

Policy Without License Valid to Assured.

Any policy of fire insurance solicited, issued or delivered in violation of the provisions of this act shall nevertheless be a valid contract in favor of the insured.

Who Deemed Agent.

Any person through whom any insurance company writing insurance upon any property in this state shall deliver a policy of insurance shall be deemed the agent of such company as to all transactions relating to such insurance had between such person and the insured named in the policy, prior to and at the delivery thereof. [Approved Mar. 15, 1899; L. 1899, p. 329.]

§ 2842. Regulating Dairy Products.

Unlawful Sales.

It shall be unlawful for any person to sell or offer for sale, or furnish or deliver to any creamery, cheese factory, corporation, person or persons whatsoever, as pure, wholesome and unskimmed, any unmerchantable, adulterated, skimmed, impure or unwholesome milk.

Authority of Commissioner.

§ 2842. Under Laws 1899, page 56, which provides in section 28 that the dairy commissioner may seize and take possession of any article, the sale of which is prohibited by that act, and in section 30 that no person shall manufacture or offer for sale process butter, unless the same is plainly marked "Renovated Butter," under penalty of fine or imprisonment, or

both fine and imprisonment, the dairy commissioner is authorized to seize such process butter when kept for sale in violation of law, since by a construction of the two sections together the commissioner is fully clothed with such power, although the penalty by fine and imprisonment is imposed: *Hathaway v. McDonald*, 27 Wash, 659, 91 Am. St. Rep. 889, 68 Pac. 376.

§ 2843. Prosecutions—Evidence.

In all prosecutions or other proceedings under this or any other law of this state, relating to the sale or furnishing milk, if it shall be proven that the milk sold or offered for sale, or furnished or delivered or had in possession with intent to sell or offer for sale, or to furnish or deliver, as aforesaid, as pure, wholesome or unskimmed milk, contain less than three per centum of pure butter fat, or less than eight per centum of milk solids other than fat, when subject to chemical analysis or other satisfactory tests, or that it, or any part of it, was drawn from cows known by the person complained of, to have been within fifteen days before or four days after parturition, or to have any disease or ulcers, or other running sores, then and in either case, the said milk shall be held and judged to be unmerchantable, adulterated, impure, or unwholesome, as the case may be, and if it shall appear that cows kept for the production of milk, or cream, for market or for sale or exchange, or for manufacturing their milk into articles of food, are kept in a crowded or unhealthy condition, or are being fed on distillery waste or other substance in a state of putrefaction or rottenness, or upon any substance of an unhealthful nature, the milk or cream from same is hereby declared impure and unwholesome. Any milk or cream from the same that has been exposed to or contaminated by emanations, discharges or exhalations from persons or animals, or to which has been added any borax, boracic acid, salicylic acid, or any other poisonous substance which prevents or tends to prevent the normal bacterial actions of milk, is hereby declared to be impure and unwholesome.

§ 2844. Cheese—Brands—Penalty.

The Washington state dairy commissioner is hereby authorized and directed to procure and issue to the cheese manufacturers of the state, and under any regulations as to the custody and use thereof as he may prescribe, a uniform stencil brand bearing a suitable device or motto and the words "Washington State Full Cream Cheese." Every brand issued shall be used on the outside of the cheese, and shall have a different number for each separate manufactory, and the commissioner shall keep a book in which shall be registered the name, location and number of each manufactory using the said brand, and the name or names of the persons at each manufactory authorized to use the same. It shall be unlawful to use or permit such stencil brand to be used upon any other than full cream cheese or packages containing the same, and such cheese only as shall contain thirty per centum of pure butter fat and have been manufactured from pure and wholesome milk, from which no portion of the butter fat shall have been removed by skimming or by other process, and in the manufacture of which neither butter nor any substance for butter, or any animal or vegetable fats or oils, have been used, or any fat which has been extracted from milk in any form and returned for the purpose of filling said cheese, shall be stamped with the "state brand." All cheese containing less than thirty per centum of pure butter fat shall be marked "skimmed cheese" in full-face capital

letters not less than one inch high, with such ink as is not easily removed by moisture. The manufacture or sale of any cheese containing less than fifteen per centum of pure butter fat, or so-called "filled cheese," is hereby prohibited: Provided, That nothing in this section shall be construed to apply to Edam, Brickstein, Pineapple, Limburger, Swiss or hand-made cheese, or any other fancy cheese: Provided further, That cheese not made in this state, but which shall be sold or offered for sale in this state, shall be so stamped as to indicate its true character: And provided further, That no cheese shall be stamped "full cream" which does not in every particular comply with the requirements of "Washington full cream" cheese, as hereinbefore set forth, except as to place of manufacture.

§ 2844a. Reports—Blanks Furnished by Commissioner.

The dairy commissioner shall furnish blanks to all proprietors or managers of creameries, cheese factories, or milk dairies that ship milk and all the vendors and peddlers of milk within the state, for the purpose of making a report of the amount of milk and dairy goods handled, and all owners or managers of such creameries and cheese factories, and all milk dairies, milk vendors or milk peddlers, shall fill out the blank, giving a full and accurate report of the business done during the year, and send it to the dairy commissioner before the first day of November of each year, every person or corporation who shall engage in the business of purchasing or dealing in milk shall attach in a permanent manner to each can furnished by him or it to the producer a tag containing in plain figures a correct statement of the capacity thereof. Any neglect or failure or false statement on the part of any proprietor or manager of such creamery, cheese factory, dairy or milk vendor or milk peddler, shall be considered a misdemeanor, and upon conviction thereof shall be punished by a fine as provided in section 13: Provided, That any information thus furnished shall be published only in such forms as to show totals and averages, and not the details of the business of any individual or concern.

§ 2846. Impure Cheese—Unlawful to Sell.

No person, by himself, his agents or his servants, shall render or manufacture, sell, offer for sale, expose for sale, or have in his possession with intent to sell or serve for patrons, guests, boarders or inmates of any hotel, eating house, restaurant, public conveyance or boarding house or public or private hospital, asylum, school or eleemosynary or penal institution, any article, product or compound made wholly or partly out of any fat, oil or oleaginous substance or compound thereof, not produced directly and wholly at the time of manufacture from unadulterated milk or the cream from the same, with or without harmless coloring matter, which shall be in imitation of yellow butter produced from pure, unadulterated milk or the cream from the same: Provided, That nothing in this act shall be construed to prohibit the manufacture and sale of oleomargarine in a separate and distinct form, and in such manner as will advise the consumer of its real character, free from coloration or ingredient that causes it to resemble butter, or the use of the same by patrons, guests, boarders or inmates of any hotel, eating house, restaurant, public conveyance or boarding house, when.

signs are displayed in a conspicuous place that may be easily read from any part of the room.

§ 2847. Ingredients of Pure Cheese.

It shall be unlawful for any person to sell, or offer for sale or exchange, or have in his possession for sale, any cheese containing any substance except salt, rennet and harmless coloring matter, other than that produced from pure milk or cream, or both, or from pure skimmed or pure half-skimmed milk.

§ 2848. Dairy Commissioner—Appointment of.

There shall be appointed by the governor, by and with the consent and advice of the senate, one competent person who shall be denominated the dairy commissioner, whose term of office shall continue four years from and after the first Monday in April after his appointment, subject to removal for cause by the governor, or until his successor be appointed and qualified.

§ 2849. Bond.

Before entering upon his duties said dairy commissioner shall file with the secretary of state a good and sufficient bond in the sum of five thousand dollars (\$5,000) conditioned for the faithful discharge of his duties under this act.

§ 2850. Deputies.

Said dairy commissioner may appoint one or more deputies whenever he is unable to perform all the duties of his office without assistance. They shall hold office at the pleasure of the dairy commissioner who may summarily remove any such deputy whenever in his judgment the public service calls for such removal: Provided, No deputy shall be employed at the cost of the state for more than thirty days in any one year: Provided, That not more than six deputies be appointed.

§ 2851. Duties of.

It shall be the duty of the dairy commissioner to devote his entire time and attention to the dairy interests of the state of Washington, to enforce all laws that now exist or that may be hereafter enacted in this state regarding the production, manufacture or sale of dairy produce, and personally to inspect any articles of milk, butter, cheese, or imitations thereof, made or offered for sale within the state, which he may suspect or have reason to believe to be impure, unhealthful, adulterated or counterfeit; and to prosecute or cause to be prosecuted any person or persons, firm or firms, corporation or corporations engaged in the manufacture or sale of any adulterated or counterfeit dairy products contrary to law.

§ 2852. State Chemist to Analyze Dairy Products.

It shall be the duty of the chemist of any state institution to correctly analyze, without extra compensation, and without other charge to the state than necessary traveling expenses, any and all substances that the dairy commissioner may send to any of them and to report to him without unnecessary delay the result of any analysis so made, and when called upon by said dairy commissioner, any such chemist shall assist him in prosecuting violators of the law, by giving testimony, either expert or otherwise.

§ 2852a. Powers of.

The dairy commissioner or his deputies shall have power, in the performance of their official duties, to enter any creamery, cheese or condensed milk factory, store, salesroom, warehouse, or any place or building where he has reason to believe that any dairy products or imitations of dairy products are kept, made, prepared, sold, or offered for sale or exchange; and to open any cask, tub, package or receptacle of any kind, containing or supposed to contain any such article, and to examine, or cause to be examined and analyzed, the contents thereof; he may seize or take any such article for analysis: Provided, That if the person from whom such sample is taken shall request him to do so, he shall at the same time and in the presence of the person from whom such property was taken, seal up two samples of the article seized or taken, one of which shall be for examination or analysis under the direction of said commissioner, and the other of which shall be delivered to the person from whom the article is taken.

§ 2855. Penalties for Violations.

Any person who shall violate any of the provisions of this act, or who shall obstruct the dairy commissioner in the performance of his duties under this act by refusing him entrance to any place enumerated in the preceding section, or by refusing to deliver to him any dairy products or imitations thereof upon demand, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars (\$25), nor more than one hundred dollars (\$100), or by imprisonment for not less than one month or more than six (6) months, or by both such fine and imprisonment.

§ 2857. Salary.

The dairy commissioner shall receive an annual salary of twelve hundred dollars (\$1,200) and his necessary expenses in the discharge of his duties under this act: Provided, That such expenses shall not exceed one thousand dollars (\$1,000).

§ 2858. Counsel for.

It shall be the duty of the attorney general or the prosecuting attorney in any county of the state, when called upon by the dairy commissioner, to render any legal assistance in their power to execute the laws and to prosecute cases arising under the provisions of this act: Provided, That the dairy commissioner may employ special counsel when necessary.

§ 2859. State Board.

The secretary of state, the professor of agriculture of the agricultural college and the dairy commissioner are hereby created a state board of dairy commissioners ex officio.

§ 2860. Compensation.

The state board of dairy commissioners shall receive no compensation for their services as such board, but shall be allowed necessary traveling expenses. All accounts for expenditure incurred or made pursuant to the provisions of this act shall be approved and certified by said state board of dairy commissioners before presentation to the state auditor.

§ 2861. Reports.

The state board of dairy commissioners shall biennially, on December first, report to the governor of this state a full account of their actions under this act; also the operations and results of this and any other laws pertaining to the dairy industry of the state; a full account of all expenses and disbursements of the board; as full and complete statistics as it is in their power to collect pertaining to the manufacture, imports and exports of dairy products within the state for the biennial term; and shall make suggestions as to the need of further legislation on this subject.

§ 2862. Expenses to be Audited.

All expenses incurred under the provisions of this act shall be audited by the state auditor upon bills being presented, properly certified by the board of dairy commissioners, and the said auditor shall, from time to time, draw warrants upon the state treasurer for the amounts thus audited.

§ 2862a. Appropriation.

To carry out the provisions of this act, there is hereby appropriated out of the general fund of the state for the term beginning April 1, 1899, six thousand dollars (\$6,000).

§ 2863. Disposal of Fines.

One-half of all fines collected under the provisions of this act shall be paid to the state treasurer and placed to the credit of the general fund and the remainder to be paid forthwith into the treasury of the county in which the conviction is obtained.

§ 2864. Information to be Furnished—Penalty for Withholding.

All clerks, bookkeepers, express agents, railroad officials, employes, or employes of common carriers shall render to the dairy commissioner and his deputies all the assistance in their power in tracing, finding, or discovering the presence of any article named in this act. Any refusal or neglect on the part of such clerks, bookkeepers, express agents, railroad officials, employes, or employes of common carriers to render such friendly aid, shall be a misdemeanor, punishable by fine of not less than twenty-five (\$25) nor more than one hundred dollars (\$100), or by imprisonment for not less than one month or more than six months, or by both such fine and imprisonment for each and every offense.

§ 2865. Impure Milk—Penalty for Selling.

No person shall sell or offer for sale any cream taken from impure or diseased milk, or any cream that contains less than eighteen per centum of pure butter fat. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100), or by imprisonment for not less than one (1) month nor more than six (6) months, or by both such fine and imprisonment.

§ 2865a. License to Carry or Peddle—Penalty.

Every person who conveys milk in carriages, carts or other vehicle for the purpose of selling the same in any city or town in the state of Washington, shall

annually on the first day of June, or within thirty (30) days thereafter, procure from the state dairy commissioner a license to sell milk within the limits of said city or town, and shall pay to the said dairy commissioner the sum of one dollar (\$1) for each carriage, cart or other vehicle to be used as provided for in section 29. Licenses shall be issued only in the names of the owners of carriages, carts and other vehicles and shall, for the purpose of this act, be conclusive evidence of ownership. No license shall be sold, assigned or transferred; each license shall contain the name, residence, place of business, number of carriages, carts or other vehicles used, and the number of the license. Each license shall, before engaging in the sale of milk, cause his name, the number of the license and his place of business to be legibly placed on each outer side of all carriages, carts or other vehicles used by him in the conveyance or sale of milk. Whoever, without being first licensed under the provisions of this section, sells milk or exposes it for sale from carriages, carts or other vehicles, or has the same in his custody or possession with intent to sell, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars (\$25) for each offense, nor more than one hundred dollars (\$100), or by imprisonment for not less than one month or more than six months or by both such fine and imprisonment: Provided, That nothing in this section shall apply to persons handling or using the milk from not more than two cows.

Every person before selling milk or offering it for sale in a store, booth, stand or market place in any town or city, shall procure a license from the state dairy commissioner and shall pay to said commissioner the sum of one dollar (\$1) yearly, within thirty days after June 1. Any person who neglects to procure such license shall be deemed guilty of a misdemeanor, and upon conviction shall be punished for each offense by a fine of not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100) for each and every offense or by imprisonment for not less than one month or more than six months or by both such fine and imprisonment.

§ 2865b. Skimmed Milk—Penalty for Selling When.

No person shall sell or expose for sale in any store or place of business or in any wagon or other vehicle used in the transportation or sale of milk from which cream has been removed or milk commonly called "skimmed milk" without first marking the can or package containing said milk with the words "skimmed milk" in large plain black letters, each letter being at least one inch high and one-half inch wide, said words to be on the side not below the middle of said can or package, where they can be easily seen. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100) for each and every offense, or by imprisonment for not less than one month or more than six months or by both such fine and imprisonment.

§ 2865c. License Fees Deposited Monthly with State Treasurer.

That all moneys received for licenses or from the sale of any and all goods

confiscated by the dairy commissioner under this act shall be received by said commissioner and deposited the first of every month with the state treasurer, to be placed in the general fund.

§ 2865d. Possession as Evidence.

Possession by any person or firm of an article or substance the sale of which is prohibited by this act shall be considered prima facie evidence that the same is kept by such person or firm in violation of the provisions of this act, and the commissioner shall be authorized to seize upon and take possession of such articles or substances, and upon the order of any court which has jurisdiction thereof, he shall sell the same for any purpose other than to be used for food, the proceeds to be paid to the state treasurer and placed to the credit of the general fund.

§ 2865e. Brands Provided—Penalty for Unlawful Use of.

The state dairy commissioner is hereby authorized and directed to procure and issue to the manufacturers of creamery butter of the state and under such regulations as to the custody and use thereof as he may prescribe a uniform brand bearing a suitable device or motto, and the words "Washington Creamery Butter." Every brand issued shall be used on the wrapper of each package and also on the outside of every package used by him, and shall contain a different number for each separate manufactory, and the commissioner shall keep a book in which shall be registered the name, location and number of each manufacturer using the said brand. It shall be unlawful to use or permit such brand to be used upon any other than Washington creamery butter or packages containing the same. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined for each offense not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100) or by imprisonment for not less than one month or more than six months, or by both such fine and imprisonment.

§ 2865f. Process Butter—Possession or Sale Prohibited.

No person, firm or corporation shall manufacture, sell or offer for sale or have in his possession with intent to sell butter known as process butter, unless the package in which the butter is sold has marked on the side of it the words "renovated butter" in capital letters one inch high and one-half inch wide with ink which is not easily removed: Provided, That it shall be unlawful for any retailer to sell said butter and unless a card is displayed on the package from which he is selling butter with the following words printed thereon so that it may be easily read by the purchaser "renovated butter," or if it is sold in packages on which a wrapper is used the words "renovated butter" shall be plainly printed on each and every wrapper: Provided further, That all process butter shipped from other states shall be subject to the same regulations as provided in this section. Whoever violates the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction shall be fined for each and every offense not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100) or by imprisonment for not less than one month or more than six months, or by both such fine and imprisonment.

All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

An emergency exists, and this act shall take effect immediately. [Approved Mar. 7, 1899; L. 1899, p. 56.]

§ 2865g. Milk Cans—Measured and Sealed.

That all milk cans or other vessels used for the shipping, sale or dispensing of milk shall have their liquid capacity United States standard, measured and plainly sealed or stamped thereon by any county auditor, as ex-officio county sealer, or any of his deputies, in the manner already provided for the sealing of weights and measures.

§ 2865h. Penalty for Using Unsealed Cans.

That any individual or corporation owning and using milk cans or other vessels or shipping, selling or dispensing of milk by measurement for a consideration in a can or vessel that has not been officially sealed and its liquid capacity plainly stamped thereon, shall be subject to a fine of five dollars for every offense, and the forfeiture of all unsealed milk cans or vessels found in his or its possession.

That any county sealer shall charge a fee of ten cents for each milk can or vessel so stamped or sealed. [Approved Mar. 13, 1899; L. 1899, p. 141.]

A state statute prohibiting the sale of process butter unless it is plainly marked with the words "Renovated Butter," so as to prevent the imposition of a fraud upon the public, falls within the police powers of the state, and is not in violation of article 1, section 8 of the federal con-

stitution, which delegates to Congress the power to regulate commerce between the states, even when such butter is sent into this state from another state for purposes of sale in unbroken packages: *Hathaway v. McDonald*, 27 Wash. 659, 91 Am. St. Rep. 889, 68 Pac. 376.

§ 2865i. Creating a State Board of Food Commission.

Adulterated Food—Unlawful to Sell or Possess.

No person, firm or corporation shall, within this state, sell, offer for sale, have in his possession with intent to sell, or manufacture for sale, any article of food which is adulterated within the meaning of this act.

Food Defined.

The term "food" as used herein shall include all articles used for food, drink and condiment by men, whether mixed, simple or compound. The term "misbranded" as used herein includes all articles of food or articles which enter into the composition of food or condiments, the package or label of which shall bear any statement purporting to name any ingredient or substances not contained in such article, which statement shall be false in any particular, or any statement purporting to name the substance of which such article is made, which statement shall not fully give the names of all the substances contained in the article in any measurable quantities, or which names as a single article of food any mixture or compound. The term "drink" as used herein, shall not include liquids containing two per cent or more of alcohol.

Adulterated Food Defined.

That for the purpose of this act an article shall be deemed adulterated in the case of foods or drinks—

(1st). If any substance or substances has or have been mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength so that such product when offered for sale shall deceive or tend to deceive the purchaser.

(2d). If any inferior or cheaper substance or substances has or have been substituted wholly or in part for the article so that the product when sold shall deceive or tend to deceive the purchaser.

(3d). If any valuable constituent of the article has been wholly or in part abstracted so that the product when sold shall deceive or tend to deceive the purchaser.

(4th). If it be an imitation of or sold under the specific name of any other article.

(5th). If it be mixed, colored, coated, powdered or stained in a manner whereby damage or inferiority is concealed, so that such product when sold shall deceive or tend to deceive the purchaser.

(6th). If it contains any added poisonous ingredients or any ingredients which may render such article injurious to the health of the persons consuming it.

(7th). If it be misbranded, labeled or branded so as to mislead or deceive the purchaser.

(8th). If it consists of the whole or any part of a diseased, filthy, decomposed, or putrid animal or vegetable substance or any portion of any animal unfit for food, whether manufactured or not, or if it is the product of a diseased animal or of any animal that has died otherwise than by slaughter: Provided, That an article of food which does not contain any added poisonous ingredient shall not be deemed to be adulterated in the following cases: First, in the case of mixtures or compounds which may be now or from time to time hereafter known as articles of food under coined names and not included under definition four of this section. Second, in the case of articles labeled, branded or tagged so as to plainly indicate that they are mixtures, compounds, combinations, imitations or blends: Provided, That the same shall be labeled, branded or tagged so as to show the character and constituents thereof. Third, when any article or ingredient has been added to foods because the same is required for the preparation or production thereof as an article of commerce, in a state fit for carriage, consumption, and not fraudulently to increase the bulk, weight or measure of the food, or conceal the inferiority thereof: Provided, further, That no dealer shall be convicted under the provisions of this act if he shall prove a written guaranty of purity in a form approved by the dairy and food commissioner: And provided further, That the guarantor is a resident of the state of Washington. Fourth, when food is inevitably mixed with some extraneous substance in the process of collection or preparation.

Guaranty—Contents—Penalties.

The guaranty referred to in subdivision eight of section 3 herein, shall

contain the full name and address of the person, firm or corporation making the sale to the dealer, and such person, firm or corporation shall be held liable to all prosecutions, fines and other penalties which would attach to the dealer under the provisions of this act.

Possession of Impure Food—Evidence. (Consolidated; Laws '05, Pg. 80.)

Possession by any person, firm or corporation of any article of food, the sale of which is prohibited by this act, or being the consignee thereof, shall be prima facie evidence that the same is kept or shipped to the said person, firm or corporation in violation of the provisions of this act, and the dairy and food commissioner is hereby authorized to seize upon and take into his possession such articles of food and thereupon apply to the superior court of the county in which such food is seized for an order directing him to dispose of or sell the same and apply the proceeds to the general fund, less the amount required to reimburse the purchaser for actual loss as shown by the bill, provided he or they have a guarantee as required in section 4: Provided, however, That the said dairy and food commissioner shall first give notice to the person, firm or corporation in whose possession such goods are found, or if the same are found in the possession of a common carrier then to the consignee of such food, notifying such person, firm or corporation that he has seized the said foods and the reasons therefor, and that he has made an application to the superior court for an order to sell or dispose of the same, and that he will call up said application for hearing on a day certain, which shall not be less than ten days from the service of such notice, and that at the hearing of said application the said person, firm or corporation shall show cause, if any they have, why the prayer of the petition should not be granted. Upon the hearing of the said petition the affidavits or oral testimony may be introduced to establish the contentions of the respective parties. Hearing, however, may be had at an earlier date by mutual consent of the parties to said application. No seizures shall be made as provided herein if the person violating the provisions of this act resides in the state of Washington.

Information to be Furnished, When, to Whom. (Laws '05, Pg. 81.)

Every person selling, exhibiting or offering for sale, manufacturing or having in his possession with intent to sell or serve or delivering to a purchaser any article of food included in the provisions of this act, shall furnish to any person demanding the same, who shall apply to him for the purpose and shall tender him the price at which the article of food is sold a sample sufficient for the analysis of any such article of food which is in his possession.

Commissioner.

The state dairy commissioner shall also be the state food commissioner and shall be known as the dairy and food commissioner, and he shall receive in addition to his salary as state dairy commissioner \$600 per year as extra compensation for enforcing the provisions of this act. He shall also have power to appoint such deputies as may be necessary, and pay therefor not to exceed three dollars per day: Provided, however, That the aggregate services of all deputies employed by him shall not exceed the appropriation made therefor.

Chemist of College—Duties in Respect to Analysis.

It shall be the duty of the chemist of the state agricultural experiment station to analyze any and all substances that the dairy and food commissioner may send to him, and report to the commissioner, without unnecessary delay, the result of any analysis so made and when called upon by the said commissioner, the chemist shall assist in the prosecution of violations of the law by giving testimony as an expert or otherwise.

Attorney General—Duties of in Prosecutions.

It shall be the duty of the attorney general and the prosecuting attorney in any county in this state, when called upon by the dairy and food commissioner, to render any legal assistance in their power to execute the law and prosecute the case arising under the provisions of this act: Provided, That the dairy and food commissioner may employ special counsel.

Powers of Commissioner.

The dairy and food commissioner or his deputies, shall have power in the performance of their official duties to enter any restaurant, eating house, hotel, public conveyance, public or private hospitals, asylum, school, eleemosynary or penal institution, where foods are served, and take for analysis any article of food or ingredients which enter into the composition of the food there used. Any articles of food or ingredients which enter into the composition of foods therein used and so taken, if found to be adulterated, shall be prima facie evidence that the same is kept to be used or served to patrons, guests, boarders or inmates of such institution, and the person, firm or corporation owning and operating restaurant, said eating-house, hotel, public conveyance, public or private hospital, asylum, school, eleemosynary or penal institution, and having in his or its possession adulterated foods, shall be deemed to have such adulterated foods contrary to the provisions of this act.

Penalties for Violating.

Every person, firm or corporation violating the provisions of this act or refusing to comply upon demand with any of the provisions thereof, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than twenty-five dollars (\$25) and not to exceed one hundred dollars (\$100), or, in case of second offense, to be imprisoned not less thirty days and not to exceed ninety days, or both such fine and imprisonment. Any person found guilty of selling, offering for sale, having in his possession with intent to sell or serve, or manufacturing for sale any adulterated article of food under the provisions of this act, shall pay in addition to the penalties herein provided for, all necessary costs and expenses incurred in inspecting and analyzing such adulterated articles of food in addition to the costs of such action: Provided, That all penalties and costs for the violation of the provisions of this act shall be paid to the board of state dairy and food commission, or to their agent. and by them paid into the state treasury and applied to the general fund.

State Board.

The state board of dairy commission ex officio shall be the state board of

dairy and food commission and said board shall hereafter be known and described as the "state board of dairy and food commission."

Expenses—How Audited and Paid.

All expenses incurred under the provisions of this act shall be paid out of the general fund, and shall be audited by the state auditor upon bills being presented, appropriately certified by the board of dairy and food commission, and the state auditor shall from time to time draw warrants upon the state treasury [treasurer] for the amounts thus audited.

Reports Published.

The dairy and food commissioner shall publish each month a report of the work of his office, including the brand, name and address of manufacturer, analysis and fines of foods found to be adulterated.

An act entitled "An act to provide against the adulteration of food," approved March 13, 1899, is hereby repealed. [Approved Mar. 16, 1901; L. 1901, p. 194.]

See Laws 1905, Page 5.

§ 2865j. Regulating Bake Shops.

Buildings and Rooms.

All buildings or rooms occupied as biscuit, bread or cake bakeries shall be drained or plumbed in a manner conducive to the proper healthful and sanitary condition thereof, and constructed with air shafts and windows or ventilating pipes sufficient to insure ventilation as the commissioner of labor shall direct, and no cellar or basement, not now used as a bakery, shall hereafter be used and occupied as a bakery and a cellar or basement heretofore occupied as a bakery shall, when once closed, not be reopened for use as a bakery.

Every such bakery shall be provided with a proper washroom and water-closet, or closets, apart from the bake room or rooms where the manufacturing of such products is conducted; and no water-closet, earth closet, privy or ash pit shall be within or communicate directly with a bake shop.

Every room used for the manufacture of flour or meal food shall be at least eight feet in height, the side walls of such room shall be plastered or wainscoted, the ceiling plastered or ceiled with lumber or metal, and if required by the commissioner of labor, shall be whitewashed at least once in three months; the furniture and utensils of such room shall be so arranged as to be easily moved in order that the furniture and floor may at all times be kept in proper healthful sanitary condition.

The manufactured flour or meal food products shall be kept in perfectly dry and airy rooms, so arranged that the floors, shelves and all other facilities for storing the same can be easily and perfectly cleaned.

The sleeping places for persons employed in a bakery shall be kept separate from the room or rooms where flour or meal food products are manufactured or stored.

Certificate of Compliance.

After an inspection of a bakery has been made by the commissioner of

labor and it is found to conform to the provisions of this act, said commissioner shall issue a certificate to the owner or operator of such bakery, that it is conducted in compliance with all the provisions of this act, but where orders are issued by said commissioner to improve the condition of a bakery, no such certificate shall be issued until such order and the provisions of this act have been complied with.

Renovation of by Owner on Notice.

The owner, agent or lessee of any property affected by the provisions of this act, shall, within thirty days after the service of notice upon him, of an order issued by the commissioner of labor requiring any alterations to be made in or upon such premises, comply therewith, or cease to use or allow the use of such premises as a bake shop; such notice shall be in writing and may be served upon such owner, agent, or lessee, either personally or by mail, and a notice by registered letter, postage prepaid, mailed to the last known address of such owner, agent, or lessee shall be deemed sufficient for the purposes of this act.

Persons Affected with Infectious Diseases Must not be Employed in.

No employer shall require, permit or suffer any person to work in his bake shop who is affected with tuberculosis, or with scrofulous diseases, or with any venereal disease, or with any communicable skin affection or contagious disease and no person so affected shall work or remain in a bake shop. Every employer is hereby required to maintain himself and his employees in a clean and sanitary condition while engaged in the manufacture, handling or sale of such food products.

Persons Under Sixteen Years of Age not to be Employed in.

No employer shall require, permit or suffer any person under sixteen years of age to work in his bake shop between the hours of eight o'clock in the evening and five o'clock in the morning.

Penalties.

Any person who violates the provisions of this act or refuses to comply with the requirements of the commissioner of labor, as provided herein, shall be guilty of a misdemeanor, and on conviction thereof before any court of competent jurisdiction, shall be fined not less than twenty-five nor more than fifty dollars or imprisoned not more than ten days for the first offense; and shall be fined not less than fifty nor more than one hundred dollars and imprisoned not less than ten nor more than thirty days for each offense after the first. [Approved Mar. 16, 1903; L. 1903, p. 258.]

§ 2867. Hawkers and Peddlers.

Licenses to Peddle.

It shall be unlawful for any person to peddle, sell or offer for sale or barter, any buggies, carriages, hacks, or road vehicles of any kind, stoves, ranges, pianos or any other merchandise except farm produce from any boat, wagon, cart or other vehicle of any kind or as a trailer thereto, or from any pack or other

package carried on foot or from any pack animal, without having first obtained a license so to do from the county auditor of the county in which said merchandise is sold, or to be offered for sale or barter: Provided, This act shall not be construed to apply to any person or his agents selling any of said articles from his regularly maintained stock or established places of business when he has maintained said stock or place of business in the said county for a period of six months, nor to any administrators or executors selling any such property at public or private sale. And provided further, That this act shall not be construed to modify or repeal any other act on the subject of licenses or peddlers.

Auditors to Issue.

The county auditors of the respective counties in this state are hereby authorized and required to issue to any applicant therefor a license to sell or peddle any article of merchandise mentioned in the preceding section of this act from any boat, wagon, cart or other vehicle of any kind or as a trailer thereto or from any pack or other package carried on foot or from any pack animal in any place in said county for the period of time to be specified in such license upon payment by such applicant of a license fee of ten dollars per day for the number of days for which license is issued.

Penalties.

Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall for each offense be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for a term of thirty days, or by both such fine and imprisonment. [Approved Mar. 5, 1903; L. 1903, p. 38.]

Honorably Discharged Soldiers may, Without License.

Every honorably discharged soldier, sailor or marine of the military or naval service of the United States, who is a resident of this state and a veteran of the late Rebellion, shall have the right to peddle, hawk, vend and sell goods, other than his own manufacture and production, without paying for the license as now provided by law, by those who engage in such business; but any such soldier, sailor or marine may engage in such business by procuring a license for that purpose as provided in section 2 of this act.

Proof of Qualifications by.

On presentation to the county auditor of the county in which any such soldier, sailor or marine may reside, of a certificate of honorable discharge from the army or naval service of the United States, in the war of the late Rebellion, such county auditor shall issue without cost to such soldier, sailor or marine, a license authorizing him to carry on the business of peddler, as provided in section 1 of this act. [Approved Mar. 13, 1903; L. 1903, p. 92.]

§ 2878. Grain inspection—Limitation of application of act.—The act of March 19, 1895 (Laws 1895, p. 253; Bal. Code, §§ 2868-2909), providing for the inspection of grain by a state grain inspector, contemplates only such grain as is received at

designated points for milling or export, and does not require inspection of grain shipped for any other purpose to any point within the state: *Wright v. Lilly*, 18 Wash. 77, 50 Pac. 786.

§ 2909a. Regulating Size of Fruit Boxes.

There is hereby created and established a standard size for apple boxes and pear boxes for the state of Washington.

The standard size of an apple box shall be eighteen inches long, eleven and one-half inches wide, ten and one-half inches deep, inside measurement. The standard size of a pear box shall be eighteen inches long, eleven and one-half inches wide, eight inches deep, inside measurement. [Approved Mar. 6, 1903; L. 1903, p. 49.]

§ 2927. Inspectors of liquor.—Ballinger's Code, section 2927, which was passed in the year 1860, when the cities of the then territory were in an embryonic stage, provides that "it shall be the duty of the county commissioners of each county to appoint at least one suitable person for each village or neighborhood where spirituous liquors are sold in less quantity than a gallon, whose duty it shall be to inspect all liquors," to be sold. Held, that the word "village" in such statute should be construed to cover a city, where the village subsequently assumed the proportions of a city, and there is no later statute making it clearly appear that a city is exempted from the provisions of the earlier statute: *State v. Meek*, 26 Wash. 405, 67 Pac. 76.

The omission of the statute now known as section 2927, Ballinger's Code, from

the Code of 1881, did not effect its repeal: *Id.*

Ballinger's Code, section 2927, was not repealed by implication by the act (Laws 1899, p. 183), entitled "an act to provide against the adulteration of food": *Id.*

Ballinger's Code, section 2927, being an act authorizing county commissioners to provide for the inspection of liquors, with a view to the prohibition of the sale of such as are impure, is not repealed as to incorporated cities by subsequent legislation which gives them the power to regulate the traffic in intoxicating liquors within their limits, since the power conferred upon cities in this respect relates more especially to what are usually termed "police powers," which must be exercised consistently with the general laws of the state, one of which is that only pure liquors shall be sold: *Id.*

§ 2933a. Limiting License for Sale of Liquors.

License to Sell Liquors.

That it shall be unlawful to sell or in any way dispose of any vinous, spirituous, malt or other intoxicating liquors, with or without a license, within two thousand (2,000) feet of any normal school, agricultural college, reform school, or state school for defective youth, now established or which may hereafter be legally established within the state of Washington: Provided, That nothing in this act shall be construed to affect in any way the provisions of "An act prohibiting the sale of intoxicating liquors on or near the grounds of the university of Washington," approved March 19, 1895.

Penalties.

Any person or persons violating the provisions of this act shall be deemed to be guilty of a misdemeanor and upon conviction thereof in any court of competent jurisdiction shall be punished by a fine of not less than two hundred (200) dollars, nor more than one thousand (1,000) dollars, or by both such fine and imprisonment. [Approved Mar. 14, 1903; L. 1903, p. 151.]

§ 2934. Cities.—Power to Grant Licenses, etc.:

See *Seattle v. Clark*, 28 Wash. 717, 69 Pac. 407.

§ 2944a. Providing for Search for and Seizure of Liquors.*Keeping for Unlawful Use.*

That every person who shall, directly or indirectly, keep or maintain, by himself or by associating or combining with others, or who shall in any manner aid, assist or abet in keeping or maintaining any room or rooms, place or places in which intoxicating liquors are received or kept for unlawful use, barter or sale or for unlawful distribution; and every person who shall receive, barter, sell, assist or abet another in receiving, bartering or selling any intoxicating liquors so received or kept, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished as hereinafter provided.

Declared Common Nuisance; Seizures.

The keeping or maintaining of any place in which intoxicating liquors are sold or given away, contrary to law, or in which such liquors are kept or harbored for the evident purpose of selling or giving away said liquors contrary to law, or where persons are permitted to resort for the purpose of drinking intoxicating liquors or where intoxicating liquors are kept for the purpose of inducing people to resort, to buy or receive intoxicating liquors in violation of law is hereby declared to be a common nuisance. Upon complaint being made of the violation of this section a magistrate shall issue a search warrant in which the premises in question shall be particularly described, commanding the sheriff or constable to thoroughly search the premises in question and to seize and hold all intoxicating liquors, vessels, bar fixtures, screens, bottles, glasses, jugs and other appurtenances found therein adapted to be used in retailing, giving away or distributing liquors in violation of law, to make a complete inventory thereof and deposit the same with the magistrate.

Custody of Liquors Seized.

The property seized under the warrant shall remain in the custody of the officer until the case has been decided by the court; if the defendant is found guilty the property seized shall be destroyed by the officer under the direction of the magistrate.

Payment of Revenue Tax—Evidence.

The payment of the United States revenue tax shall be held to be prima facie evidence that the person is a common seller of intoxicating liquors and his place a common nuisance when conducted in violation of law.

Penalties.

Any person violating any of the provisions of this act shall, upon the conviction of the same, be punished by a fine of not less than fifty (50) nor more than five hundred (500) dollars, or in lieu thereof be imprisoned not less than thirty (30) days nor more than ninety (90) days in the county jail. For each subsequent offense the punishment shall be by imprisonment in the county jail for not less than six (6) months nor more than one (1) year. [Approved Mar. 4, 1903; L. 1903, p. 31.]

§ 2947. Actions against saloon-keepers.
A lessor of premises who has been compelled to pay a judgment for damages against him by reason of the injuries resulting from the sale by his tenant of intoxicating liquors on the leased premises has no right

of action against his tenant, when the latter had not been made a party to the original action fixing the liability of the lessor: *Burkman v. Jamieson*, 25 Wash. 606, 66 Pac. 48.

§ 2948. Police and Sanitary Regulations—Inspection of Petroleum Oils.

Inspection—Labeling—Quality.

All mineral or petroleum or any oil, fluid or substance which is a product of petroleum or into which petroleum or any product of petroleum enters or is found as a constituent element, whether manufactured within this state or not, before being offered or exposed for sale for consumption for illuminating purposes within this state shall have plainly impressed or otherwise plainly marked upon each barrel, tank, can, vessel or package in which the same is sold, offered or exposed for sale, the words "Illuminating oil" and all oils shall be rejected for illuminating purposes which emit a combustible vapor at a temperature less than one hundred and twenty degrees Fahrenheit's thermometer: Provided, The quantity of oil used in the flash test shall not be less than one-half a pint.

The oil tester adopted shall be the Foster automatic tester cup with lighted wick inside the tube and under the thimble which shall be used by the commissioner and his deputies.

Unlawful Sales Defined.

All mineral and petroleum oils, such as benzoine, benzine, gasoline, naphtha and distillates shall not be sold, offered or exposed for sale within this state whether manufactured within this state or not, unless the barrel, tank, cans, vessel or package containing the same shall be conspicuously, securely and plainly marked or labeled with the name of its contents.

Unlawful Sales, Penalties for.

Any person for himself or as an agent of another who sells or attempts to sell for himself or any other person in this state any such oils as mentioned in sections 1 and 2 of this act, for consumption within this state, whether manufactured within this state or not, without having the same marked and labeled as set forth in said sections 1 and 2 hereof shall be guilty of a misdemeanor and on conviction thereof shall be fined in any sum not less than one hundred dollars, and not exceeding three hundred dollars and any person who falsely brands, marks or labels any package, cask, tank, can or barrel as provided in sections 1 and 2 hereof or refills and uses any package, cask, can or barrel without the same being remarked or labeled as required in said sections 1 and 2, or falsely marks the test on such package, cask, can or barrel higher in degree than said article will stand under the test hereinbefore specified, shall be guilty of a misdemeanor and on conviction thereof shall be fined in any sum not exceeding five hundred dollars nor less than one hundred dollars or by imprisonment in the county jail not exceeding six months or by both such fine and imprisonment at the discretion of the court.

Commissioner for Inspection.

The state dairy and food commissioner shall also be oil commissioner and shall be known as the state dairy, food and oil commissioner, and he shall re-

ceive in addition to his salary as dairy and food commissioner three hundred dollars per year as extra compensation for enforcing the provisions of this act. He shall also have power to appoint such deputies as may be necessary and pay therefor three dollars per day: But provided, however, That the aggregate services of all deputies employed by him shall not exceed the sum of fifteen hundred dollars per annum.

Duties of.

It shall be the duty of the state dairy, food and oil commissioner upon complaint being made to him by any person, firm or corporation, of the violation of any of the provisions of this act, for him or his deputies to make the test in the manner provided in section 1 of this act, of any petroleum oil contained in any package, cask, tank, can or barrel above mentioned, as he may deem necessary. It is further provided that said commissioner may call upon the chemist of the state university, or the chemist of the state agricultural college and school of science to assist in making said test, and it shall be the duty of the said chemist to give such assistance when so requested.

Expenses, How Paid.

All expenses incurred under the provisions of this act shall be paid out of the general fund and shall be audited by the state auditor upon bills being presented appropriately certified by such commissioner and the state auditor shall from time to time draw warrants upon the state treasurer for the amounts thus audited. All fines collected under the provisions of this act shall be paid into the common school fund of the state.

Appropriation.

For the carrying out of the provisions of this act there is hereby appropriated the sum of eighteen hundred dollars out of the moneys in the general fund not otherwise appropriated. [Approved Mar. 21, 1903; L. 1903, p. 394.]

§ 2955a. Cigarettes—Unlawful to Sell to Minors.

That it shall hereafter be unlawful in the state of Washington for any corporation, company, firm or person to sell, barter, furnish or give away, directly or indirectly, to any minor under eighteen years of age any cigarette, cigarette wrappers or any substitute for either; or to procure for, or to persuade, advise, counsel or compel any minor under said age to smoke cigarettes or for any minor under said age to smoke any cigarette.

Penalties.

Any such corporation, company, firm or person, violating any of the provisions of the preceding section shall, for the first offense, upon conviction thereof, be fined in any sum not more than fifty dollars, nor less than ten dollars; and for a second and any subsequent offense, such corporation, company, firm or person shall, upon conviction thereof, be fined in any sum not more than five hundred dollars nor less than ten dollars, and to which may be added imprisonment in the county jail for any period not exceeding sixty days. It is hereby made the special duty of prosecuting attorneys to enforce

the provisions of this act, and he may summon any minor under eighteen years of age who may have or had had in his possession any cigarettes, and compel him to testify before the mayor of a city or a justice of the peace as to where and of whom he obtained such cigarettes.

All laws in conflict with the provisions of this act are hereby repealed. [Approved Mar. 16, 1901; L. 1901, p. 261.]

§ 2957. State Board of Health—Powers and Duties of.

The state board of health shall have supervision of all matters relating to the preservation of the life and health of the people of the state. The board shall have supreme authority in matters of quarantine, and may declare and enforce it when none exists, may modify, relax or abolish it when it has been established. The board may have special or standing orders or regulations for the prevention of the spread of contagious or infectious diseases, and for governing the receipt and conveyance of remains of deceased persons, and such other sanitary matters as admit of and may best be controlled by universal rule. It may also make and enforce orders in local matters, when in the opinion of the state board of health, an emergency exists and the local board of health has neglected or refused to act with sufficient promptness or efficiency, or when no such local board has been established, and all expenses so incurred shall be paid by the county in which such services are rendered out of the general fund of said county. It shall be the duty of all local boards of health, health authorities and officials, officers of the state institutions, police officers, sheriffs, constables, and all other officers and employees of the state, or any county, city or township thereof, to enforce such quarantine and sanitary rules and regulations as may be adopted by the state board of health, and in the event of failure or refusal on the part of any member of said board or other officials, or persons in this section mentioned to so act, he or they shall be subject to a fine of not less than fifty dollars, upon first conviction, and upon conviction of second offence [offense] of not less than one hundred dollars. The board shall make careful inquiry as to the cause of disease especially when contagious, infectious, epidemic or endemic, and take prompt action to control and suppress it. It shall respond promptly, when called upon by the state or local government and municipal or township boards of health, to investigate and report upon the water supply, sewerage, disposal of excreta, heating, plumbing, or ventilation of any place or public building.

It shall be the duty of the local board of health, health authorities or officials, and of physicians in localities where there are no local health authorities or officials, to report to the state board of health, promptly upon discovery thereof, the existence of any one of the following diseases which may come under their observation, to wit: Asiatic cholera, yellow fever, smallpox, scarlet fever, diphtheria, typhus, typhoid fever, bubonic plague or leprosy, and of such other contagious or infectious diseases as the state board may from time to time specify. And when any contagious or infectious disease shall, in the opinion of the state board of health, become or threaten to become epidemic in any city, village or county, and the local authorities shall neglect or refuse to enforce measures

which, in the opinion of the state board of health, are efficient for its prevention, the state board of health, or its executive officers, on the order of the president of said board, may appoint a medical or sanitary officer, and such assistants as he may require, and authorize him to enforce such orders or regulations as said board or its executive officer may deem necessary, the expense thereof to be paid by that county in which such services are rendered out of its general fund.

All prosecutions and proceedings instituted by the state board of health, for the violations of any of the provisions of this chapter, or any other laws to be enforced by this board, for the violation of any of the orders or regulations of the state board of health, shall be instituted by its proper officer on the order of the board; and all laws prescribing the modes of procedure, courts, practice, and penalties for judgments applicable to local boards of health, shall apply to the state board of health, and the violation of its laws or orders; and all fines or judgments collected or received, shall be paid over to the state treasurer, and credited to the fund created for the support of the state board of health. [Amendment, approved Mar. 16, 1901; L. 1901, p. 236.]

§ 2965. Secretary, Salary of.

They shall elect a secretary, who shall perform the duties prescribed by the board, and by this chapter. He shall receive a salary of one thousand dollars per annum. He shall after April 1, 1903, also receive his actual traveling expenses incurred in the performance of his official duties. The other members of the board shall receive no compensation for their services, but their traveling and other expenses, while employed on business of the board, shall be paid. The president of the board shall quarterly certify the amount due the secretary as salary, and all other accounts due, and on presentation of his certificate, with the proper vouchers, the auditor of state shall draw his warrant on the treasurer for the amount. [Amendment, approved Mar. 12, 1903; L. 1903, p. 86.]

§ 2970. To Prevent Spread of Contagious Diseases.

Amended; Chapter 35, Sec. 1, June '07.
County Commissioners to be Health Board.

The board of county commissioners of each and every county in this state shall be constituted a county board of health for such county, and said board of commissioners' jurisdiction shall be coextensive with the boundaries of said county except that nothing herein contained shall give said board jurisdiction in cities of the first class. The chairman of the board of county commissioners shall be president of the county board of health, and the county auditor shall be clerk thereof; they shall appoint a legally qualified physician county health officer, who shall also be the county physician and who shall be ex officio a member of the county board of health and shall be the executive officer thereof. They may appoint as many sanitary officers as they deem necessary and fix the compensation of all appointees, who shall serve during the pleasure of the board. In case of the refusal or neglect of any county board of health to appoint a health officer, the state board of health may make such appointment for such county for one year and fix the compensation, and a health officer so appointed shall have the same duty, power and authority as though appointed by the

county board of health. The county board of health shall make such report to the state board of health as the state board may require.

Duties of as Such.

amended: Chap. 85 Laws '07.

It shall be the duty of the county board of health to make such rules and regulations as in their opinion may be necessary for the prevention, suppression and control of any dangerous, contagious or infectious disease, which rules and regulations shall take effect from and after the approval of the state board of health. They shall have the authority to establish and maintain a pesthouse or isolation hospital or quarantine station, and to restrain, quarantine, vaccinate or disinfect any person or persons sick with or exposed to any dangerous, contagious or infectious disease, in accordance with their rules and regulations, and the rules and regulations of the state board of health.

Duties of Health Officers.

It shall be the duty of all health officers, upon the appearance of any dangerous, contagious or infectious disease within their jurisdiction, immediately to investigate all circumstances concerning such disease and to make a full report thereof to the county board of health and to the state board of health, and at all times promptly to take such measures for the prevention, suppression and control of such disease as may be needful and proper. The health officer shall have the power to remove to and restrain in the pest house or isolation hospital or to quarantine or isolate any person sick with any dangerous, contagious or infectious disease until such sick person shall have thoroughly recovered and been disinfected. He may also quarantine, isolate, restrain, vaccinate or disinfect any person or persons exposed to any dangerous, infectious or contagious disease in such manner and for such time as he may deem best, or the state board of health may direct. The health officer shall report to the state board of health concerning the progress of any dangerous, contagious or infectious disease, and the measures taken for its prevention, at such intervals as the state board of health may direct.

Duty of Physician.

Whenever any physician shall attend any person residing without the limits of any incorporated city who is sick with any dangerous, contagious or infectious disease, or with any disease required to be reported by the state board of health, he shall, within twenty-four hours, give notice thereof to the clerk of the county board of health of the county in which such sick person may then be.

In case of the question arising as to whether or not any person is affected or is sick with a dangerous, contagious or infectious disease, the opinion of the health officer shall prevail until the state board of health can be notified, and then the opinion of the executive officer of the state board of health, or any member or physician he may appoint to examine such case, shall be final.

Dangerous, etc., Diseases Defined.

The term, "dangerous, contagious or infectious disease," as used in this act shall be construed and understood to mean such disease or diseases as the state board of health shall designate as contagious or infectious and dangerous to the public health.

Penalties for Violations.

Any person violating any of the provisions of this act or violating or refusing or neglecting to obey any of the rules and regulations or orders made in accordance with this act for the prevention, suppression and control of dangerous, contagious or infectious diseases by the county board of health or health officer or state board of health, or who shall leave any pesthouse or isolation hospital or any quarantine house or place without the consent of the proper officer, shall be guilty of a misdemeanor, and upon conviction shall be subject to a fine of not less than \$25.00 nor more than \$100.00 or imprisonment in the county jail not to exceed ninety days, or both. Any county commissioner or health officer or other officer or physician who shall refuse or neglect to enforce the provisions of this act, or who shall refuse or neglect to enforce or obey any of the rules and regulations or orders of the state board of health made for the prevention, suppression and control of dangerous, contagious or infectious diseases, shall be guilty of a misdemeanor and shall be subject to a fine of not less than \$50.00 nor more than \$100.00 or to imprisonment in the county jail not to exceed ninety days, or both.

Expenses, How Paid.

All expenses incurred in carrying out the provisions of this act, or any of them, shall be paid by the county by which or in behalf of which such expenses shall have been incurred. [Approved Mar. 12, 1903; L. 1903, p. 83.]

§ 2983. Sanitary pesthouses—Provision for.—It was not error to refuse a requested instruction to the effect that in order to bind the county the jury must find that the acts of its physician in connection with taking possession of the property were expressly authorized by the board of county commissioners, or that such acts were subsequently ratified, since there was testimony, unobjected to, that

such physician was the qualified health officer of the county, and Ballinger's Code, section 2983, confers general and discretionary power upon such officers sufficient, under exigency calling for immediate action, to enable them to act without express authorization of the board: *Brown v. Pierce County*, 28 Wash. 347, 68 Pac. 872.

§ 3014. Regulating Practice of Medicine—Board of Medical Examiners, Duties of.

Hereafter every person desiring to commence the practice of medicine and surgery, or either of them, in any of its or their branches, in this state, shall make a written application to said board for a license so to do. And each applicant for such license shall be not less than twenty-one years of age, shall furnish a certificate of good moral character, and shall be a graduate of some duly authorized medical college now having at least a three years' graded course. Such applicant at the time and place designated by said board, or at the regular meeting of said board, shall submit to an examination in the following branches: Anatomy, physiology, chemistry, histology, materia medica, therapeutics, preventive medicines, practice of medicine, surgery, obstetrics, diseases of women and children, diseases of the nervous system, diseases of the eye and ear, medical jurisprudence, and such other branches as the board shall deem advisable. Said board shall cause said examination to be both scientific and practical, and of sufficient severity to test the candidate's fitness to practice medicine and

surgery; which examination shall be by written or printed, or partly written or partly printed questions and answers, and the same shall be filed and preserved of record in the office of the secretary of said board. After examination, if the same be satisfactory, said board shall grant a license to such applicant to practice medicine and surgery in the state of Washington, which said license can only be granted by the consent of not less than five members of said board, except as hereinafter provided, and which said license shall be signed by the president and secretary of said board, and attested by the seal thereof. The fee for such examination shall be ten dollars, and shall be paid by the applicant to the treasurer of said board toward defraying the expense thereof; and such board may refuse or revoke a license for unprofessional or dishonorable conduct, subject however to the right of such applicant to appeal from the decision of said board refusing or revoking such license as hereinafter provided: Provided, however, That in all cases where an applicant for a license under this act shall produce and exhibit to the examining board, a certificate from a board of medical examiners appointed under the laws of any state of the United States and recognizing licenses from this state certifying to the fact that the person presenting such certificate is duly and well qualified to practice medicine and surgery, in the state issuing said certificate, and that said board issuing said certificate has subjected the applicant to a thorough examination to ascertain this fact, he or she may, at the discretion of the examining board upon paying the fee herein prescribed and otherwise complying with all the requirements of this act, receive from the examining board provided for in this act a license as if an examination of said applicant was had in this state, and upon filing said license with the clerk of the superior court as herein provided, he or she shall be a legally qualified practitioner of medicine and surgery in this state, subject to all the provisions of this act as to the revocation of said license as herein provided. [Amendment, approved Mar. 1, 1901; L. 1901, p. 47.]

§ 3018. License to be Recorded—List Furnished.

The person receiving said license shall before he or she commences the practice of medicine or surgery or any of their branches file the same, or a certified copy thereof, with the county clerk in and for the county where he or she resides, and said county clerk shall file said certificate, or copy thereof, and enter a memorandum thereof giving the date of said license and name of the person to whom the same was issued, and the date of such filing, in a book to be provided and kept for that purpose; and said county clerk shall each year furnish, to the secretary of said board a list of all certificates on file in his office, and upon notice to him of a change of location or death of a person so licensed, or of the revocation of the license granted to such person, said county clerk shall enter, in the appropriate place in the record so kept by him, a memorandum of said fact, so that the records kept by the county clerk shall correspond with the records of the board as kept by the secretary thereof. In case a person so licensed shall move into another county in this state, he or she shall procure from the county clerk a certified copy of said license, and file the same with the county clerk in the county to which he or she shall remove.

Said county clerk shall file and enter the same with like effect as if the same were the original license. Proof of failure to file said license or copy thereof, with the county clerk as herein provided, shall be prima facie evidence of a violation of this act, and shall be punishable as provided herein. The county clerk's records shall be the only evidence required as proof of such failure to file, but may be rebutted by competent testimony. [Amendment, approved Feb. 14, 1901; L. 1901, p. 49.]

§ 3019. Penalties for Practicing Without License.

Any person practicing medicine or surgery or either of its or their branches within this state without first having obtained, and filed the license provided for in this act, or contrary to the provisions of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than fifty dollars nor more than one hundred dollars or by imprisonment in the county jail not less than ten days nor more than ninety days, or by both such fine and imprisonment. In all prosecutions under the provisions of this act, evidence that the defendant has failed to file a license with the county clerk as herein required, shall be prima facie evidence that the defendant is not a legally licensed practitioner. And each day of such illegal practice shall be deemed a separate offense under this act. All fines collected under the provisions of this act shall be paid into the state treasury for the use and benefit of the common schools of this state. (Any person shall be deemed as practicing within the meaning of this act who shall have and maintain an office or place of business with his or her name and the words physician or surgeon "Doctor," "M. D." or "M. B." in public view, or shall assume or advertise the title of doctor or any title which shall show or shall tend to show that the person assuming or advertising the same is a lawful practitioner of any of the branches of medicine or surgery in such a manner as to convey the impression that he or she is a practitioner of medicine or surgery under the laws of this state; or any person who shall practice medicine or surgery under a false or assumed name, or under cover of the name of some legal practitioner, or personate any legal practitioner or for a fee prescribe or direct, or recommend for the use of any person any drug or medicine for the treatment, care or relief of any wound, fracture or bodily injury, infirmity or disease: Provided however, That this act shall not apply to dentists while confining themselves strictly to dentistry.) Justices of the peace and the superior court shall have concurrent jurisdiction of violations of this act it shall be the duty of the respective county or district attorneys to prosecute all violations of this act. In cases of appeal to the superior court as hereinbefore provided it shall be the duty of the prosecuting attorney of the county wherein such appeal shall be tried to represent said board upon said appeal. And in all cases of appeal to the supreme court under the provisions of this act the attorney general shall represent said board upon such appeal. [Amendment, approved Feb. 14, 1901; L. 1901, p. 50.]

§ 3020b. Regulating the Practice of Barbering.

It shall be unlawful for any person to follow the occupation of barber in any incorporated city or town in this state, unless he shall have first obtained

a certificate of registration as provided in this act: Provided, however, That nothing in this act shall apply to or affect any person who is now engaged in such occupation except as hereinafter provided.

Barbering Defined.

Shaving the face, or cutting the hair or the beard of any person either for hire or reward, shall be construed as practicing the occupation of barbering within the meaning of this act.

Board of Examiners, How Appointed.

A board of examiners, to consist of three persons, is hereby created to carry out the purposes and enforce the provisions of this act. Said board shall be appointed by the governor, the appointees to be chosen from practical barbers who have at least five years prior to their appointment followed the occupation, and have been residents of the state of Washington for two years. Each member of the said board shall serve for a term of three years, and until his successor is appointed and qualified, except in the case of the first board who shall serve one, two and three years respectively.

Organization of.

Said board shall elect a president, secretary and treasurer, shall have a common seal, and shall have power to administer oaths. The headquarters of said board shall be the place of residence of the secretary.

Bond of Treasurer.

The treasurer of said board shall give surety bond to be approved by and deposited with the auditor of this state, in the sum of one thousand dollars, and said board shall take the oath provided by law for public officers. The costs of said bond shall be paid out of the funds in the hands of the treasurer.

Compensation.

Each member of said board shall receive a compensation of five dollars per day for actual service and actual expenses incurred in attending the meetings of the board. All moneys shall be paid out of the fund in the hands of the treasurer, and in no event shall any money be paid out of the state treasury.

Reports.

Said board shall report to the governor of this state biennially a full statement of the receipts and disbursements of the board during the preceding two years, a full statement of its doings and proceedings, and such recommendation as may seem proper.

Examinations.

Said board shall hold public examinations at least four times a year in different cities of this state, at such times and places as it may determine, notice of such meetings to be sent to the various applicants by mail, at least ten days before the meetings are to be held.

Report of Barbers—License to Practice.

Every person now engaged in the occupation of barber in cities of the first, second or third class in this state shall within ninety days after the ap-

proval of this act file with the secretary of said board an affidavit setting forth his name, residence and length of time during which and the places where he has practiced such occupation, and shall pay to the secretary of said board one dollar, and a certificate entitling him to practice said occupation for one year shall thereupon be issued to him.

Registration of Applicants.

To obtain a certificate of registration under this act, any person excepting those mentioned in section nine shall make application to said board, and shall pay to the secretary an examination fee of five dollars, and shall present himself at the meeting of the board for examination of applicants. The board shall examine such person, and being satisfied that he is above the age of eighteen years, of good moral character, free from contagious or infectious disease, has studied the trade for two years as an apprentice under or as a qualified and practicing barber in this state, or other states, and is possessed of the requisite skill to properly perform all the duties, including his ability in the preparation of the tools used, shaving, cutting of the hair and beard and all the various services incident thereto, and has sufficient knowledge concerning the common diseases of the face and skin to avoid the aggravation and spreading thereof in the practice of his trade, his name shall be entered by the board in a register hereinafter provided for and a certificate of registration shall be issued to him authorizing him to practice said trade in this state, for one year. All certificates shall be renewed each year, for which renewal, a fee of fifty cents shall be paid. All persons making application for examination under the provisions of this act, shall be allowed to practice the occupation of barber until the next meeting as designated by said board.

Apprentices.

Nothing in this act shall prohibit any person from serving as an apprentice in said trade under a barber authorized to practice under this act: Provided, That in no barber-shop shall there be more than one apprentice to each registered barber and all apprentices shall be registered with the secretary of said board for which registration no fee shall be paid.

Said board shall furnish to each person who has successfully passed examination, a certificate of registration, bearing the seal of the board and the signature of its president and secretary certifying that the holder thereof is entitled to practice the occupation of barber in this state, and it shall be the duty of the holder of such certificate to post the same in a conspicuous place in the shop.

Register to be Kept by Board.

Said board shall keep a register in which shall be entered names of all persons to whom certificates are issued under this act, and said register shall be at all times open to public inspection.

Powers of Board.

Said board shall have power to revoke any certificate of registration granted by it under this act, for (a) conviction of crime, (b) drunkenness, (c) having

or imparting any contagious or infectious disease or (d) for doing work in an unsanitary or filthy manner: Provided, That before any certificate shall be revoked the holder thereof shall have notice in writing to the change [charge] or charges against him, and shall at a day specified in said notice, at least five days after the service thereof be given a public hearing and full opportunity, to produce testimony in his behalf, and to confront the witnesses against him. Any person whose certificate has been so revoked may after expiration of ninety days upon application have the same reissued to him upon satisfactory showing that disqualification has ceased.

Penalties for Violations.

Any person practicing the occupation of barber in any city of the first, second or third class in this state, without first having obtained a certificate of registration as provided in this act, or falsely pretending to be practicing such occupation under this act, or who uses, or allows towels to be used on more than one person before such towels have been laundered; or razors, lather, or hair brushes on more than one person before same shall have been sterilized or in violation of any of the provisions of this act, and every proprietor of a barber-shop who shall willfully employ a barber who has not such a certificate shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than ten dollars nor more than one hundred dollars, or by imprisonment in the county jail not less than ten days nor more than ninety days, or both. [Approved Mar. 18, 1901; L. 1901, p. 349.]

§ 3025. Dentistry—Practice of.

Any person or persons seeking to practice dentistry in the state of Washington, or to own, operate or cause to be operated, or to run or manage a dental office or place for the practice of dentistry in the state of Washington after the passage of this act shall file his or her name, together with an application for examination, with the secretary of the state board of dental examiners, and at the time of making such application shall pay to the secretary of the board a fee of twenty-five dollars, and to present him or herself at the first regular meeting thereafter of said board to undergo examination before that body. No person shall be eligible for such an examination unless he or she shall be of good moral character and shall present to said board his or her diploma from some dental college in good standing and shall give satisfactory evidence of his or her rightful possession of the same: Provided, This section shall not apply to persons engaged in the practice of dentistry at the time of the passage of this act who are bona fide citizens of the state of Washington. All persons successfully passing such examination shall be registered as licensed dentists in the board register as hereinafter provided, and also receive a certificate, said certificate to be signed by the president and secretary of said board and in substantially the following form, to wit:

This is to certify that is hereby licensed to practice dentistry in the state of Washington. This certificate must be filed for record in the office of the auditor of any county in which the party holding such certificate

desires to practice, and it is unlawful for him (or her) to practice dentistry in any county in which said certificate is not filed for record.

Dated at this day of, A. D. 190...

.....
(President of said board of examiners.)

.....
(Secretary of said board.)

[Amendment, approved Mar. 18, 1901; L. 1901, p. 314.]

§ 3027. Dentists—Registration of.

Every person having been admitted to the practice of dentistry by said board in this state after the approval of this act shall on or before the first day of July, 1901, cause his or her name, residence and place of business to be registered with the board of dental examiners, if not already registered. A statement of every such person that he was engaged in the practice of dentistry in this state at the time of approval of this act shall be verified under oath by him and placed with the board of dental examiners. It shall be the duty of the secretary of the said board to send to each person registered under the provisions of this act without fee a certificate similar in form to the other certificate provided for by this act, signed by the president and secretary of said board of examiners, which certificate the holder thereof shall have recorded with the county auditor of the county in which the holder desires to practice, within ninety days from the date of said certificate.

That hereafter if any association or company of persons, whether incorporated or not, shall engage in the practice of dentistry under the name of "company," "association," or any other title, said company or association shall cause to be displayed and kept in a conspicuous place at the entrance to its place of business the name of each and every person employed by said company or association in the practice of dentistry; and any person employed by such company or association whose names shall not be displayed as above provided, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished as hereinafter provided, and the said association or company if incorporated, or the persons comprising the same if not incorporated, shall for such failure to display the aforesaid name be guilty of a misdemeanor, and upon conviction thereof, shall be punished as hereinafter provided. [Amendment, approved Mar. 18, 1901; L. 1901, p. 316.]

§ 3029. Penalty for Practicing Without License.

Any person who, as principal, agent, employer, employee or assistant, who in any manner whatsoever shall practice dentistry or who shall own, run, operate or cause to be operated, or manage a dental office or headquarters in the state of Washington without having first filed for record and had recorded

in the office of the auditor of the county wherein he shall so practice or do such act, a certificate from said board of dental examiners as herein provided, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum not less than fifty dollars, nor more than two hundred dollars, or be confined for any period not exceeding six months in the county jail for each and every offense: Provided, The foregoing provisions of this section shall not, prior to the tenth day of July, 1901, apply to any person who shall be practicing dentistry in this state at the time of the passage of this act and whose name shall be registered under the provisions of this act in the records of said board. After said tenth day of July, 1901, all the provisions of this section shall apply to all persons whomsoever. All fines recovered under this act shall be paid into the common school fund of the county in which the conviction is had. [Amendment, approved Mar. 18, 1901; L. 1901, p. 317.]

§ 3032. Defines Practicing.

All persons shall be said to be practicing dentistry within the meaning of this act who shall contrary to this act for a fee or salary or other reward paid either to himself or to another person for operations or parts of operations of any kind, treat diseases or lesions of the human teeth or of jaws or correct malpositions thereof, or who shall own, run or manage a dental office or department in the state of Washington, without registering and procuring the license as herein provided.

An emergency exists and this act shall take effect immediately. [Amendment, approved Mar. 18, 1901; L. 1901, p. 317.]

§ 3034. Relating to the Practice of Pharmacy.

Unlawful to Practice Without License.

That it shall hereafter be unlawful for any person to compound or dispense drugs, medicines or poisons, or to institute any pharmacy, store or shop for wholesaling or retailing, compounding or dispensing drugs, medicines or poisons, unless such person shall be a registered pharmacist or shall place in charge of said pharmacy store or shop a registered pharmacist except as hereinafter provided.

§ 3035. Who may be Licensed.

In order to be a registered pharmacist, all persons must be either graduated in pharmacy, licentiates in pharmacy, assistant pharmacists or licensed physicians.

Graduates in pharmacy shall be such persons as have obtained a diploma from such college or school of pharmacy as be approved by the state board of pharmacy, as sufficient guaranty of their attainments and proficiency.

Licentiates in pharmacy shall be such persons as shall have had three years practical experience in drugstores wherein the prescriptions of medical practitioners are compounded and have sustained a satisfactory examination before the state board of pharmacy hereinafter mentioned. The state board may grant certificates of registration to licentiates of such other state boards as it may deem proper without examination.

Assistant pharmacists shall be such persons not less than eighteen years of age as have had two years' practical experience under a registered pharmacist, the time of attendance at any reputable school of pharmacy to be accredited to such time, and who shall have passed a satisfactory examination before the state board of pharmacy. Persons who have passed a similar examination before any other state board of pharmacy, upon furnishing satisfactory proof thereof, may receive a certificate of registration as assistant pharmacist without further examination, at the discretion of the state board. The holder of a certificate of registration as assistant pharmacist shall be deemed competent to act as clerk or salesman in a drugstore or pharmacy under the supervision of the registered pharmacist in charge thereof, and during the temporary absence of said registered pharmacist.

§ 3036. Apprentices to be Reported to Board.

It shall be the duty of the registered pharmacists who take into their employ an apprentice for the purpose of becoming a pharmacist to report to the board within three months thereafter, such facts regarding his schooling and preliminary qualifications as the board may require for the purpose of registration. The board shall furnish proper blanks for this purpose and may issue to such apprentice a certificate of registration as a registered apprentice, and the date of the certificate shall be proof of the time when practical experience began with the apprentice named therein. The fee for such registration shall be fifty cents.

§ 3037. Terms of Board—How Appointed.

The members of the board of pharmacy of the state of Washington shall hold office as respectively designated in their appointments, for the term of one, two, three, four or five years, and until their successors may have been duly elected and appointed. The Washington state pharmaceutical association shall annually elect five pharmacists, from which number the governor of the state shall appoint one to fill the vacancy annually occurring in said board. The term of office shall be five years. In case of a vacancy occurring from any cause, the governor shall fill the vacancy by appointing a pharmacist from the names last submitted, to serve as a member of the board for the remainder of the term: Provided, That the board of pharmacy of the state of Washington heretofore duly elected and appointed under and by virtue of the provisions of

that certain act entitled "An act to regulate the practice of pharmacy, the licensing of persons to carry on such practice, and the sale of poisons in the state of Washington," being chapter 153 of the Session Laws of 1891, approved March 9, 1891, shall continue as such board, the members thereof holding their respective offices under this act by virtue of their election and appointment made heretofore, and their successors to be elected and appointed in the manner set forth herein.

§ 3038. Organization of Board—Meetings for Examination.

The state board shall annually elect a president and a secretary from the number of its own members, who shall be elected for the term of one year, and shall perform the duties prescribed by the board. It shall be the duty of the board to examine all applicants for registration submitting application in the proper form; to grant certificates of registration to such person as may be entitled to the same under the provisions of this act; to cause prosecutions of all persons violating its provisions; to report annually to the governor and to the Washington state pharmaceutical association upon the condition of pharmacy in the state, which said report shall furnish a record of the proceedings of said board for the year, as well as the names of all persons registered under this act; and also an itemized account of all moneys received and disbursed by them as such board, which account shall be audited by the Washington state pharmaceutical association annually. The board shall hold meetings for the examination of applicants for registration and the transaction of such other business as shall pertain to its duties at least once in six months: Provided, That the president of the board of pharmacy may call special meetings of said board not more than twice in any one year for the purpose of transacting such business as may properly come before it, and said board shall give thirty days' public notice of the time and place of all its meetings. The said board shall also have power to make by-laws for the proper execution of its duties under this act, and shall keep a book of registration in which shall be entered the names and places of business of all persons registered under this act, together with a record of the conditions justifying such registration. Three members of said board shall constitute a quorum for transaction of all business that may properly come before the board.

§ 3039. Who may be Registered.

All persons hitherto registered, either as pharmacists, assistant pharmacists or physicians, under the laws of this state, shall be entitled to all rights and privileges of registration under this act: Provided, That physicians to be entitled to the benefits of this act must make application for registration hereunder within thirty days of the taking effect of this act.

§ 3040. Fees—Second Examination—Shopkeepers.

Every person claiming registration as a graduate in pharmacy or as a licensee of some other state board shall, before a certificate be granted, pay to the secretary of the state board of pharmacy the sum of three dollars, and every applicant for registration by examination under this act, shall pay the said secretary the sum of five dollars before such examination be attempted: Provided, That in case the applicant fails to pass a satisfactory examination he shall have the privilege, under section 13, of a second examination without charge any time within one year. Every shopkeeper desiring to secure the benefits and privileges of this act is hereby required to secure a certificate of registration, and he shall pay the sum of one dollar for the same, and annually thereafter the sum of one dollar for renewal as required of registered pharmacists: Provided, however, That nothing in this section shall apply to shopkeepers dealing only in patent or proprietary medicines in the original packages.

§ 3041. Annual Fees.

Every registered pharmacist and assistant pharmacist who desires to continue the practice of his profession shall annually on or before the first day of June of each year pay to the secretary of said board a renewal registration fee, the amount of which shall be fixed by the board, and which in no case shall exceed two dollars for a pharmacist and one dollar for an assistant, in return for which payment he shall receive the renewal of such registration. Every certificate of registration and every renewal shall be conspicuously exposed in the pharmacy or shop to which it applies. Any registered pharmacist, assistant pharmacist or shopkeeper who shall fail or neglect to conspicuously expose such certificates as are herein provided, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than five nor more than ten dollars, and the costs of the action.

§ 3042. Salary of Secretary—Expenses, How Paid.

The secretary of the board of pharmacy shall receive an annual salary not to exceed three hundred dollars, which salary shall be determined by said board; he shall also receive his traveling and other expenses necessarily and actually incurred in the performance of his official duties. The other members of said board shall each receive the sum of five dollars for every day actually engaged in their official duties, and all legitimate and necessary expenses incurred therein. Said expenses shall be paid from the fees and penalties received by the board under the provisions of this act, and no part of the salary or other expenses of said board shall be paid out of the public treasury, and of all moneys received by said board in excess of said allowance and other expenses hereinbefore provided for, one-half shall be held by the secretary of the board as a special fund for meeting the expenses of the board; the remaining one-half shall be

ly him paid over annually to the treasurer of the Washington state pharmaceutical association on the order of the president and secretary of said association, to be expended in defraying the necessary expenses incurred in carrying out the provisions of this act subject to the approval of the state board of pharmacy. Said secretary of the board shall give such bonds as the board shall from time to time direct.

§ 3043. Penalties.

Any person not a registered pharmacist, and not having in his employ a registered pharmacist within the full meaning of this act, who shall retail, compound or dispense medicines, or who shall take, use or exhibit the title of registered pharmacist, shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined in any sum not to exceed fifty dollars. Any person who shall permit the compounding and dispensing of prescriptions, or vending of drugs, medicines or poisons in his store or place of business, except under the supervision of a registered pharmacist, or any registered pharmacist or shopkeeper registered under this act while continuing in business, who shall fail or neglect to procure annually his renewal of registration, or any person who shall willfully make any false representations or to procure registration for himself or any other person, or who shall violate any of the provisions of this act willfully and knowingly, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not to exceed fifty dollars: Provided, That nothing in this act shall operate in any manner to interfere with the business of any physician in regular practice, or prevent him from supplying to his patients such medicines as he may deem proper, nor with the making or selling of proprietary medicine or medicines placed in sealed packages, nor with the exclusive wholesale business of any dealer, except as hereinafter provided, nor prevent shopkeepers, from dealing in and selling the commonly used medicines and poisons or patent and proprietary medicines, if such medicines and poisons are sold in the original package of the manufacturer, or in packages put up by a registered pharmacist.

§ 3044. Proprietors of Drugstores Responsible for Quality of Drugs, etc.

Every proprietor of a wholesale or retail drugstore shall be held responsible for the quality of all drugs, chemicals or medicines sold or dispensed by him except those sold in original packages of the manufacturer and except those articles or preparations known as patent or proprietary medicines. Any person who shall knowingly, willfully or fraudulently falsify or adulterate any drug or medicinal substance or preparation authorized or recognized by the pharmacopoeia of the United States or used or intended to be used in medical practice, or shall willfully, knowingly or fraudulently offer for sale, sell or cause the same to be sold for medical purposes shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine in any sum not less

than seventy-five nor more than one hundred and fifty dollars or by imprisonment in the county jail for a period of not less than one month nor more than three months, and any person convicted a third time for violation of any of the provisions of this section may suffer both fine and imprisonment. In any case he shall forfeit to the state of Washington all drugs or preparations so falsified or adulterated.

§ 3045. To Keep Register of Poisons Sold.

The proprietor of every drugstore shall keep in his place of business a registry book, in which shall be entered an accurate record of all sales of mineral acids, carbolic acid, oxalic acid, hydrocyanic acid, potassium cyanide, arsenic and its preparations, corrosive sublimate, red precipitate, preparations of opium (except paregoric), phosphorus, nux vomica and strychnine, aconite, belladonna, hellebore and their preparations, croton oil, oil of savin, oil of tansey, creosote, wines, and spirituous or malt liquors, and such other dangerously poisonous drugs, chemicals and medicinal substances as may from time to time be designated by the state board of pharmacy, upon a recommendation to them to that effect by the Washington state pharmaceutical association. Printed notice of all such additions to the poisons named and provided for in this section shall be given to all persons registered under this act with the next following renewal of their certificate thereafter. Said record shall state quantity purchased, the date, for what purpose used, buyer's name and address, and said record at all times during business hours shall be subject to the inspection of the prosecuting attorney or any authorized agent of the board of pharmacy: Provided, That no such wines, spirituous or malt liquors shall be sold for any other than medical, scientific, mechanical or sacramental purposes, and no other license shall be necessary under any law of the state for pharmacists to make said sale in compliance with the provisions of this act. All poisons shall be plainly labeled as such and that such label shall also bear the name and address of the manufacturer if said poison is in the original package of the manufacturer, if otherwise that of the druggist putting up or selling the same. The provisions of this section shall not apply to dispensing under physicians' certificates.

§ 3046. Itinerant Vendor—License Fee.

Any itinerant vendor or any peddler of any medicine, drug, nostrum or ointment or preparation, for the treatment of disease or injury, shall pay a license fee of not less than one dollar nor more than twenty-five dollars per month into the treasury of the board, subject to regulations formulated by said board of pharmacy. It shall be lawful for said board to issue license to such itinerant vendor or peddler on application made to the state board of pharmacy, such license to be signed by the president and attested by the secretary with the seal of the board. And such itinerant vendor or peddler, who shall vend or sell or offer to sell any such medicine, drug, nostrum or ointment

or preparation without having a license so to do as herein provided shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not less than twenty dollars, and not exceeding fifty dollars for such offense, and each sale, or offer for sale, shall constitute a separate offense.

§ 3047. Suits, How Prosecuted.

All suits for the recovery of the several penalties prescribed in this act shall be prosecuted in the name of the state of Washington in any court having jurisdiction and it shall be the duty of the prosecuting attorney of the county wherein such offense is committed to prosecute all persons violating the provisions of this act upon the filing of proper complaint. All penalties collected under the provisions of this act shall inure one-half to the state board of pharmacy and one-half to the school fund of the county in which suit was prosecuted and judgment obtained.

§ 3048. Repeal.

Chapter 153 of the Session Laws of 1891 of Washington, being an act entitled "An act to regulate the practice of pharmacy, the licensing of persons to carry on such practice, and the sale of poisons in the state of Washington, approved March 9, 1891, and chapter 113 of the Session Laws of 1893, being an act entitled "An act to amend section 8, chapter 153 of the Session Laws of 1891 of Washington, regulating the practice of pharmacy, approved March 9, 1891, and declaring an emergency," approved March 10, 1893, are hereby repealed. [Approved Mar. 13, 1899; L. 1899, p. 216.]

§ 3049a. Regulating the Sale of Spraying Compounds.

Adulterated Materials—Unlawful to Sell.

That it shall hereafter be unlawful for any person, firm or corporation, doing business in the state of Washington, to sell or offer for sale adulterated or low grade Paris green, arsenic, London purple, sulphur or any spray material or compound for spraying purposes.

Definitions.

For the purposes of this act Paris green shall contain not less than fifty per cent of arsenic trioxide in combination, and not more than four per cent of water; soluble arsenic trioxide, and commercial arsenic shall contain not less than ninety-six (96) per cent of arsenic trioxide.

Penalty.

Any person, firm or corporation violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall

be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars. All fines imposed for violation of the provisions of this act shall be paid to the treasurer of the county wherein the violation was committed, and placed to the general fund of such county.

Who to Enforce Law.

That the state commissioner of horticulture and the county fruit inspectors under his supervision be charged with the enforcement of this act, with the assistance of the prosecuting attorney.

Chemist of Agricultural College to Analyze.

It shall be the duty of the chemist of the state agricultural experiment station to correctly analyze, without extra compensation and without extra charge to the state, other than the necessary expenses, all substances and compounds used or offered for sale for spraying trees and plants, that the state commissioner of horticulture may send for analysis, and report to him without unnecessary delay the result of any analysis so made; any such chemist shall assist him in prosecuting violations of the law by giving testimony, expert or otherwise. [Approved Feb. 26, 1901; L. 1901, p. 19.]

§ 3049b. Regulating Horseshoeing.

Horseshoeing Without Registration, Unlawful.

No person shall practice horseshoeing either as a master horseshoer or as a journeyman horseshoer for hire in any city of first, second and third class in this state, unless he has duly registered as hereinafter provided, in a book kept for that purpose in the office of the city clerk of the city in which he practices: Provided, however, That any person who has duly registered under the provisions of the act of the legislature of this state, entitled "An act requiring horseshoers to pass an examination and providing for a board of examiners," approved March 13, 1899, need not again register under the provisions of this act.

City Clerk to Keep Register.

The city clerk of each city of first, second and third class in this state, shall keep a book in his office to be known as a master's and journeyman's horseshoer's register, in which shall be recorded the names of all master and journeyman horseshoers entitled to continue the practice of horseshoeing in such city.

Who may Register—How to Register.

Any person who at the time of the passage of this act is practicing as a master or journeyman horseshoer in any city of the second or third class in this state, may register within sixty (60) days after the passage of this act, after

making and filing with the clerk of the city in which he practices, an affidavit stating that he was practicing horseshoeing at the time of the passage of this act, and such register shall exempt him from the provisions of the act requiring an examination. No person shall be entitled to register as a master or journeyman horseshoer without presenting a certificate of satisfactory examination from the horseshoers' board of examiners, from the city in which he desires to practice, as provided for in section five of this act, and whose qualification and examination shall be that he has served an apprenticeship at horseshoeing at least three years: Provided, That this section shall not be so construed as to prohibit any person who has made application for examination, to practice horseshoeing under the direct supervision of a person who has passed such examination, while the board of examiners is acting upon or deferring upon such application.

Board of Examiners Created—Fees.

In every city affected by this act, there shall be appointed a board of examiners consisting of one veterinary and two master horseshoers and two journeyman horseshoers which shall be called "horseshoers' board of examiners," who shall be residents of such city, and whose duty it shall be to carry out the provisions of this act, and shall have a power to fix a standard of examinations to test the qualifications of applicants. The members of said board shall be appointed by the mayor of such city, and the term of office shall be five (5) years, except that the members of said board first appointed shall hold office for the term of one, two, three, four and five years, as designated by the mayor and until their successors shall be duly appointed. The board of examiners shall have a regular place of meeting and shall hold sessions for the purpose of examining applicants desiring to practice horseshoeing as master or journeyman horseshoers in each city affected by this act, not later than three days after applications have been presented to them, and shall grant a certificate to any person showing himself qualified to practice, and the board shall receive as compensation a fee not exceeding ten (\$10) dollars from each person examined. Three members of said board shall constitute a quorum.

Every applicant who shall have complied with the provisions of sections four and five of this act, shall be admitted to register and shall pay the city treasurer of the city in which he desires to register the sum of fifty (50) cents, which shall be received as full compensation for such registration.

Fraudulent Certificates—Punishment for Use of.

Any person who shall present to the clerk for the purpose of registration any certificate which has been fraudulently obtained, or shall in any wise knowingly violate or neglect to comply with any of the provisions of this act, shall be guilty of a misdemeanor and shall, for each and every offense, be punished by a fine of not less than ten (\$10) or more than one hundred (\$100) dollars, or by imprisonment in the county jail for a term of not less than ten (10) days or more than thirty (30) days, or by both fine and imprisonment.

Repeal.

An act requiring horseshoers to pass examinations passed by the legislature of the state of Washington and approved by the governor March 13, 1899, entitled "An act requiring horseshoers to pass an examination and providing for a board of examiners," is hereby repealed: Provided, Such repeal shall not affect any rights existing under said act nor proceedings pending thereunder. [Approved Mar. 11, 1901; L. 1901, p. 116.]

§ 3049c. Regulating the Sale of Eyeglasses and Spectacles.*Unlawful to Sell Without License.*

It shall be unlawful for any person to peddle, sell or offer for sale or barter any spectacles or eyeglasses, as an article of merchandise, from any boat, wagon, cart or other vehicle of any kind, or from any pack, basket, or other package carried on foot, or from a pocket of his clothing, without having first obtained a license so to do from the county auditor of the county in which said merchandise is sold or to be offered for sale or barter: Provided, This act shall not be construed to apply to any person selling spectacles or eyeglasses in his regular, established place of business, nor to administrators or executors selling property of deceased persons at public or private sale.

County Auditor to Issue, When.

The county auditor of the respective counties in this state are hereby authorized and required to issue to any applicant therefor a license to sell or peddle spectacles or eyeglasses, as an article of merchandise, from any traveling boat, wagon, cart or any kind of vehicle, or from any pack, basket or package carried on foot, or from a pocket of the clothing, in any of the incorporated cities or towns and elsewhere in said county, outside of the regular established place of business of such applicant, within this state, for the period of time to be specified in such license upon payment by such applicant of a license fee of five dollars per day for the number of days for which such license is issued.

Penalties.

Any person violating the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall, for each offense, be punished by a fine of not less than twenty dollars nor more than one hundred dollars, or by imprisonment in the county jail for a term of thirty days or by both such fine and imprisonment. [Approved Mar. 16, 1901; L. 1901, p. 173.]

§ 3050. Creating Office of State Veterinary Surgeon—Salary.

There shall be and is hereby created the office of state veterinarian, whose office shall be vested in the professor of veterinary science of the agricultural college and experiment station, who shall be chosen in the same manner as other

members of the faculty and station staff of said college and station, and shall serve as state veterinarian without compensation in addition to the salary paid by the college and experiment station. The veterinary surgeon shall be a graduate of some regular and established veterinary college and shall be skilled in veterinary science. He shall be a member of the state board of health, which membership shall be in addition to that now provided for by law. He shall be under the direction of the president of the state agricultural college and director of the experiment station and school of science, and perform such duties as the board of regents may prescribe. When actually engaged in the discharge of his official duties outside the said college and experiment station he shall receive, in addition to his salary, actual traveling expenses, which shall be presented to the president of the college under oath and covered with written vouchers before receiving the same. He shall also be allowed the clerical assistance, express, postage, and incidentals necessary for the proper and efficient conduct of his office. He shall receive as salary such compensation as the regents of the state agricultural college may determine.

Definition of Quarantine.

Quarantine shall mean the placing and restraining of any animal or animals by the owners or agents in charge of them within certain inclosures described or designated by such owner or owners or agent in charge of such animals in writing by the state veterinary surgeon. Any owner or owners or agent who fails to comply with or willfully violates or negligently allows such quarantine to be violated by the escape and running at large of the quarantined animals shall be guilty of a misdemeanor and punished accordingly.

Duty of Veterinary to Report Diseases.

It shall be the duty of every graduate veterinary surgeon and every person professing to be a veterinary surgeon practicing their profession within this state to report to the state veterinary surgeon immediately upon the discovery thereof the existence or suspected existence among domestic animals within the state of any of the following diseases: Glanders, tuberculosis, actinomycosis, hog cholera, swine plague, anthrax, contagious keratitis, stomatitis, pustulosa contagiosa, scabies, contagious abortion and rabies. In the event of the failure or refusal on the part of the above named persons to so do he shall be guilty of a misdemeanor and punished accordingly. [Amendment, approved Feb. 27, 1903; L. 1903, p. 28.]

§ 3051. Powers and Duties.

He shall have general supervision of all contagious and infectious diseases among domestic animals within or that may be in transit through the state, and he is authorized and empowered to inspect and test all cattle within the state

for tuberculosis whenever in his judgment it is deemed advisable, and he is empowered to establish quarantine against any and all such animals affected with any contagious or infectious disease or diseases, or that have been exposed to others thus diseased, whether within or without the state; and he may with the concurrence of the state board of health, make such rules and regulations as he may deem necessary for the protection against the spread and for the suppression of said disease or diseases, which rules and regulations after the concurrence of the governor, shall be published and enforced, and in doing said things, or any of them, he shall have the power to call on any one or more peace officers, whose duty it shall be to give him all the assistance in their power. [Amendment, approved Mar. 16, 1901; L. 1901, p. 228.]

§ 3054. Destruction of Infected Stock.

Whenever in the opinion of the state veterinary surgeon the public welfare demands the destruction of any diseased animal under the provisions of this act, he shall cause the same to be destroyed. No stock shall be destroyed except on the written order of the state veterinary surgeon. The governor of the state with the state veterinary surgeon may co-operate with the government of the United States for the object of this act and the governor is hereby authorized to receive and receipt for any money receivable by this state through provisions of any act of Congress which may at any time be in force upon this subject, and to pay the same into the state treasury to be used according to the act of Congress and the provisions of this act. [Amendment, approved Mar. 16, 1903; L. 1903, p. 228.]

§ 3077a. Relating to Cemeteries.

Associations for Maintaining Cemetery.

Ten or more persons residing within any county of this state may associate themselves together by [by] an agreement in writing in the manner and form prescribed in an act entitled "An act to provide for the incorporation of associations for social, charitable and educational purposes," approved March 21, 1895, being contained in section 4445 to 4456 inclusive of Ballinger's Annotated Codes and Statutes of Washington, for the purpose of organizing themselves into a cemetery association, and upon complying with the provisions of said act, so far as applicable, they shall be and remain a corporation.

Powers of.

All such associations shall have power to prescribe the terms on which members may be admitted, the number of its trustees and officers and the time and manner of their election or appointment and the time and place of meeting for the trustees and for the association, and to pass all such other by-laws as may be necessary for the good government of such association.

Such association shall be authorized to purchase or take by gift or devise, and hold land exempt from execution and from any appropriation to public purposes, for the sole purpose of a cemetery not exceeding eighty acres, which shall be exempt from taxation if intended to be used exclusively for burial purposes, and in nowise with a view to profit of the members of such association: Provided, That when the land already held by the association is all practically used then the amount thereof may be increased by adding thereto not exceeding twenty acres at a time. Such association may by its by-laws provide that a stated percentage of the moneys realized from the sale of lots, donations or other sources of revenue, shall constitute an irreducible fund, which fund may be invested in such manner or loaned upon such securities as the association or the trustees thereof may deem proper. The interest or income arising from the irreducible fund, provided for in any by-laws, or so much thereof as may be necessary, shall be devoted exclusively to the preservation and embellishment of the lots sold to the members of such association, and where any by-laws has been enacted for the creation of an irreducible fund as herein provided for it cannot thereafter be amended in any manner whatever except for the purpose of increasing such fund. After paying for the land all the future receipts and income of such association subject to the provisions herein for the creation of an irreducible fund, whether from the sale of lots, from donations, rents or otherwise, shall be applied exclusively to laying out, preserving, protecting and embellishing the cemetery and the avenues leading thereto, and in the erection of such buildings as may be necessary or convenient for the cemetery purposes, and to paying the necessary expenses of the association. No debts shall be contracted in anticipation of any future receipts except for originally purchasing, laying out and embellishing the grounds and avenues, for which debts so contracted such association may issue bonds or notes and secure the same by way of mortgage upon any of its lands, excepting such lots as shall have been conveyed to the members thereof; and such association shall have power to adopt such rules and regulations as they shall deem expedient for disposing of and for conveying burial lots.

It shall be lawful for said trustees, wherever in their opinion any portion or portions of their lands are unsuitable for burial purposes, to sell such portion or portions, and apply the avails thereof to the general purposes of such association.

Burial Lots Exempt from Tax.

Burial lots, sold by such association shall be for the sole purpose of interment, and shall be exempt from taxation, execution, attachment or other claims, lien or process whatsoever, if used as intended, exclusively for burial purposes and in no wise with a view to profit.

Grounds to be Platted and Recorded.

All such associations shall cause a plan of their grounds and of the blocks and lots by them laid out, to be made and recorded, such blocks or lots to be numbered by regular consecutive numbers, and shall have power to inclose, improve and adorn the grounds and avenues, to erect buildings for the use of the association and to prescribe rules for the designation and adorning of lots and for erecting monuments in the cemetery, and to prohibit any use, division, improvement or adornment of a lot which they may deem improper. An annual exhibit shall be made of the affairs of the association.

Penalties for Destroying, etc.

Any person who shall willfully destroy, mutilate, deface, injure or remove any tomb, monument or gravestone, or other structure in any cemetery, or any fence railing or other work for the protection or ornament of a cemetery or tomb, monument or gravestone or other structure aforesaid or of any cemetery lot within a cemetery or shall willfully destroy, cut, break or injure any tree, shrub or plant within the limits of a cemetery shall be deemed guilty of a misdemeanor and shall upon conviction thereof before any court of competent jurisdiction be punished by a fine of not less than five dollars nor more than five hundred dollars, and imprisonment in the county jail for a term not less than one nor more than thirty days, according to the nature and aggravation of the offense and such offender shall also be liable in an action of trespass in the name of said association, to pay all such damages as have been occasioned by his unlawful act or acts, which wrong, when recovered shall be applied to the reparation and restoration of the property destroyed or injured as above. [Approved Mar. 6, 1899; L. 1899, p. 44.]

§ 3077b. Who may Reserve Land for.

Any person owning any land, exclusive of encumbrances of any kind, situate two miles outside of the corporate limits of any incorporated city or town, may have the same reserved exclusively for burial and cemetery purposes by complying with the terms of this act, provided said lands so sought to be reserved shall not exceed in area one acre.

Such person or persons shall cause such land to be surveyed and platted.

Dedication of, how Made.

A deed of dedication of said tract for burial and cemetery purposes with a copy of said plat shall be filed with the county auditor of the county in which said lands are situated and the title thereto shall be and remain in the owner, his heirs and assigns, subject to the trust aforesaid.

Exempt from Taxation.

Upon compliance with the requirements of this act said lands shall forever be exempt from taxation, judgment and other liens and executions. [Approved Mar. 18, 1901; L. 1901, p. 307.]

§ 3093. Public nuisance—Private person may enjoin.—Where the only means of ingress to, and egress from, the lands of a private person in order to reach a market for the products of his farm and nursery is a public highway, the obstruc-

tion of such highway is of such special injury to him, as to authorize his maintaining an action to enjoin it as a public nuisance: *Smith v. Mitchell*, 21 Wash. 536, 75 Am. St. Rep. 875, 58 Pac. 667.

§ 3101. Regulating Sale of Commercial Fertilizers.*Label—Statement to Chemist of College—Affidavit.*

Every lot or parcel of commercial fertilizers or material used for manurial purposes sold, offered or exposed for sale within this state, the retail price of which is ten dollars or more per ton, shall be accompanied by a plainly printed label, stating clearly and truly the number of ten pounds of fertilizer in the package, the name, brand or trademark under which the fertilizer is sold, the name and address of the manufacturer or importer, the place of manufacture and a chemical analysis stating the percentage of nitrogen, of potash soluble in water and of soluble reverted and insoluble phosphoric acid. Whenever any fertilizer or fertilizing ingredients are shipped or sold in bulk for use by farmers in this state a statement must be sent to the chemist of the Washington state agricultural experiment station at Pullman, who is hereby created state chemist, ex officio, giving the name of the goods so shipped and accompanied by an affidavit from the seller, giving the percentage of the several fertilizing ingredients guaranteed. All fertilizers sold, offered or exposed for sale shall be accompanied by a label giving a correct general statement of the composition and ingredients of the same.

Copy of Statement to Experiment Station.

Before any commercial fertilizer, the retail price of which is ten dollars or more per ton, is sold, offered or exposed for sale, the importer, manufacturer or party who causes it to be sold or offered for sale within this state shall file with the chemist of the Washington state agricultural experiment station a certified copy of the statement named in section 1 of this act, and a list of the names and addresses of his agents in this state; and shall also deposit with said chemist, at his request, a sealed glass jar or bottle containing not less than one pound of the fertilizer, accompanied by an affidavit that it is a fair, average sample thereof.

Analysis Fee.

The manufacturer, importer, agent or seller of any brand of commercial fertilizer or material used for manurial purposes, the retail price of which is ten dollars or more per ton, shall pay on or before the first day of April annually to the treasurer of the Washington state agricultural experiment station an analysis fee of six dollars for each of the fertilizing ingredients contained, or claimed to exist in, said fertilizer to be sold, offered or exposed for sale within this state as aforesaid: Provided, however, That whenever the manufacturer or importer shall have paid the fee herein required for any person acting as agent or seller for such manufacturer or importer, such agent or seller, shall not be required to pay the fee named in this section; and on receipt of said analysis fees the treasurer of the Washington state agricultural experiment station shall issue certificates of compliance with this act.

Leather Fertilizer, Accompanied by Printed Statement of the Fact.

No person shall sell, offer or expose for sale in this state any pulverized leather, raw, steamed, roasted, or in any form, as fertilizer or manure without

an explicit printed certificate of the fact, to be conspicuously affixed to every package of such fertilizer or manure, and to accompany or go with every lot or parcel of the same.

Penalty.

Any person selling, offering or exposing for sale any commercial fertilizer without the statement as required by the first section of this act, or with a label stating that said fertilizer contains a larger percentage of any one or more of the constituents mentioned in said section than is contained therein, or respecting the sale of which all the provisions of the foregoing sections have not been fully complied with, shall pay a fine of fifty dollars for the first offense and one hundred dollars for each subsequent offense.

This act shall not affect parties manufacturing, importing or purchasing fertilizers for their own use and not selling in this state.

Analysis by Chemist of Agricultural College.

The director of the Washington state agricultural experiment station shall cause to be collected and analyzed by the chemist of the Washington state agricultural experiment station, or deputy, samples of such fertilizing materials as are subject to the conditions of this act, which may from time to time be sold, offered or exposed for sale in this state; and the director of the Washington state agricultural experiment station shall cause the results of the analysis of fertilizers collected under this act to be published, and issue the results to the farmers of the state as rapidly as the progress of the work will allow, together with the comparative commercial value per ton, and such other information as circumstances may advise. The chemist shall compile the results of the analysis of the fertilizers collected under this act and furnish a copy of the same to the director of the Washington state agricultural experiment station for publication.

Samples for Chemist at Experiment Station.

The chemist of the Washington state agricultural experiment station is hereby authorized, in person or by deputy, to take a sample not exceeding two pounds in weight for analysis from any lot or package of fertilizer, or any material used for manurial purposes which may be in the possession of any manufacturer, importer, agent or dealer, but the said samples shall be taken in the presence of said party or parties in interest or their representatives, and taken from a parcel or number of packages which shall be not less than ten per cent of the whole lot inspected, and shall be thoroughly mixed, divided into two samples placed in glass vessels, carefully sealed, and a label placed on each stating the name or brand of the fertilizer or material sampled, the name of the party from whose stock the sample was taken, and the time and place of taking the same, and said label shall also be signed by the chemist or his deputy and by the party or parties in interest or their representatives present at the taking and sealing of said sample. One of said samples shall be retained by the chemist or deputy and the other by the party whose stock was sampled. Every person violating this act shall be prosecuted by the prosecuting attorney of the

county in which the violation occurs, upon complaint of the director and chemist of the Washington state agricultural experiment station.

Definitions.

For all the purposes of this act fertilizers shall be considered as distinct brands when differing either in guaranteed composition, trademark, name or in any other characteristic method of marking of whatever nature.

Expenses, How Paid.

The expenses of collection, analysis, printing and distribution authorized by this act shall be paid from and out of the moneys received by the treasurer of the Washington state agricultural experiment station under the provisions of section 3 of this act. [Approved Mar. 8, 1899; L. 1899, p. 80.]

§ 3102. Sales and Transfers of Merchandise Stocks—Duty of Buyers.

It shall be the duty of every person who shall bargain for, or purchase any stock of goods, wares or merchandise in bulk, for cash, or on credit, before paying to the vendor, or his agent, or representative, or delivering to the vendor, or his agent, any part of the purchase price thereof, or any promissory note, or other evidence therefor, to demand of and receive from such vendor, or agent, or if the vendor or agent be a corporation, then from the president, vice-president, secretary or managing agent of such corporation, a written statement, sworn to substantially as hereinafter provided, of the names and addresses of all the creditors of said vendor, to whom said vendor may be indebted, together with the amount of the indebtedness due or owing, and to become due or owing, by said vendor to each of such creditors; and it shall be the duty of said vendor, or agent, to furnish such statement, which shall be verified by an oath to the following effect:

State of Washington, ss.
County of

Before me personally appeared (vendor, or agent, as the case may be), who being by me first duly sworn upon his oath doth depose and say that the foregoing statement contains the names of all of the creditors of (the name of the vendor) together with their addresses, and that the amount set opposite each of said respective names is the amount now due and owing, and which shall become due and owing by (vendor) to such creditors, and that there are no creditors holding claims due, or which shall become due for or on account of goods, wares or merchandise purchased upon credit or on account of money borrowed to carry on the business of which said goods are a part, other than as set forth in said statement, and in this affidavit, are within the personal knowledge of affiant.

Subscribed and sworn to before me this day of, 190..

(Title of officer taking oath.)

Liability of Purchaser.

Whenever any person shall bargain for, or purchase any stock of goods, wares or merchandise in bulk, for cash, or on credit, and shall pay any part of

the purchase price, or execute or deliver to the vendor, thereof, or to his order, or to any person for his use, any promissory note, or other evidence of indebtedness for said purchase price, or any part thereof, without first having demanded and received from said vendor, or from his agent, the statement provided for in section 1 of this act and verified as there provided, and without paying, or seeing to it that the purchase money of the said property, is applied to the payment of the bona fide claim of the creditors of the vendor as shown upon such verified statement, share and share alike, such sale, or transfer shall be fraudulent and void.

*30 Wash. 549, 33 W. 624, 34 W. 18, 35 W. 160, 36 W. 119,
37 " 206, 40 W. 150, 185, 40 Wash. 566.*

Penalty.

Any vendor of any stock of goods, wares or merchandise in bulk, or any person who is acting for, or on behalf of any vendor, who shall knowingly or willfully make or deliver, or cause to be made or delivered a statement as provided for in section 1 of this act which shall not include the names of all the creditors of such vendor with the correct amount due, and to become due to each of them or which shall contain any false or untrue statement, shall be deemed guilty of perjury, and upon conviction thereof, shall be punished by imprisonment in the penitentiary for not less than one nor more than five years, or shall be fined in any sum not exceeding one thousand dollars.

Definition of Sale in Bulk.

Any sale or transfer of a stock of goods, wares or merchandise out of the usual or ordinary course of business or trade of the vendor, or whenever substantially the entire business or trade ~~therefore~~ ^{to} [therefore] conducted by the vendor, shall be sold or conveyed or whenever an interest [in] or to the business or trade of the vendor is sold or conveyed, or attempted to be sold or conveyed shall be deemed a sale and transfer in bulk in contemplation of this act: Provided, however, That [if] such vendor produces and delivers a written waiver of the provisions of this act from his creditors as shown by such verified statements then and in that case the provisions of this section shall not apply.

Nothing in this act contained shall apply to executors, administrators, receivers, or any public officer acting under judicial process. [Approved Mar. 16, 1901; L. 1901, p. 222.]

§ 3118a. Lumbering—Lumber in Carloads, to be Weighed.

All railroad companies operating any railroad or any part thereof within the limits of this state are required to provide scales and weigh at some common point or points within this state all cars loaded with lumber, shingles or any other forest products destined for shipment to any and all points within the limits of the state, and also carload shipments of said commodities to any and all points outside of the limits of this state. Also that charges for freight on said commodities be based on the weights determined by the weighing stations within the limits of this state. Also that all bills of lading of railroads operating within the limits of this state specify said provision. [Approved Mar. 18, 1901; L. 1901, p. 300.]

§ 3135 Relative to Taking up and Sale of Logs.*Unlawful to Take up or Sell, When.*

That it shall be unlawful for any corporation except boom companies who are compelled to catch and hold logs, spars, piles, boom sticks, shingle bolts, and other timber of value, or any person, or persons, to take up, and it shall be unlawful for any corporation, person or persons to sell, dispose of, or appropriate to its, his or their own use, any saw logs, hewn or other timber of value found on the bank or banks of, or adrift on any bay, harbor, river, stream, bayou, marsh, ditch or other waters in this state that shall be marked with any mark, or brand, without permission of the owner thereof or his agent: Provided, The person or persons claiming such mark or brand shall have had a description and diagram thereof recorded in the office of the auditor of any county in this state as provided by law, and knowledge of the ownership of all such timber for the purpose of this act shall be conclusively presumed upon proof that said timber was properly marked, and that the description and diagram of marks had been theretofore duly recorded as aforesaid.

Unlawful to Purchase, When.

That it shall be unlawful, for any person knowingly to purchase from anyone taking up any saw logs, spars, piles, boom sticks, shingle bolts, hewn or other timber of value found adrift on any bay, harbor, river, stream, bayou, marsh, ditch or other waters in this state, that shall be marked with any mark or brand without permission of the owner thereof or his agent.

Penalty.

Any person or persons violating any of the foregoing provisions of this act shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not exceeding three hundred (300) dollars.

Rights of Owner—Penalty for Obstructing.

The owner of any such log, spar, pile, boom stick, shingle bolt or other timber of value who has a mark or brand recorded, as provided by law, or who claims ownership of or the right to possession of such logs, spars, piles, or other timber, by, through, or under a person having such recorded mark or brand may at any time lawfully, by himself or his agent enter in a peaceable manner into or upon any mill or mill boom, or raft of logs, spars, piles or other timber on any of the waters of this state, in search of any such log, spar, pile, boom stick, shingle bolt or other timber, which he may have lost, and retake the same; and any person who shall willfully prevent or obstruct such search when such search is being made in good faith, or prevent the retaking of such log, spar, pile, boom stick, shingle bolt or other timber, shall be deemed guilty of a misdemeanor and on conviction thereof, shall be fined in any sum not exceeding one hundred dollars.

Penalty for Manufacturing Branded Logs.

Any person or persons, or corporation who shall take up or cause to be taken up and manufactured into lumber or shingles, any saw log, piling, shingle .

bolt, or other timber of another, as provided in this act, which saw log, piling, shingle bolt, or other timber, shall have been previously branded with the mark or marks of the owner or owners thereof, and the diagram and description of which shall have theretofore been duly recorded in the auditor's office of any county in this state as hereinbefore provided, without the permission or request of said owner, shall forfeit to the owner of said timber ten times the value thereof to be recovered in an action at law; and every employee or agent of the person, persons or corporation who shall aid or assist in taking up such timber, or who shall aid or assist in such manufacture, shall be jointly or severally liable with his principal for such penalty. [Approved Mar. 16, 1901; L. 1901, p. 262.]

§ 3140. To Protect Forests from Fire.

Fire Warden.

That the state land commissioner shall be ex-officio state forest fire warden.

County Board of Fire Wardens.

That the county commissioners of the various counties shall constitute a county board of deputy forest fire wardens, and may appoint such deputy fire wardens as they may deem necessary and prescribe the territory to be patrolled by them, and fix their compensation, and may remove them at pleasure.

Fire Patrolmen.

That all state land cruisers shall be ex-officio forest patrolmen at large.

Who may be Appointed—How.

That timber cruisers and others in the employ of corporations or individuals may, at the discretion of the state forest fire warden, be vested with the duties and powers of special forest patrolmen at large, without compensation, or at the discretion of any county board of deputy forest fire wardens be vested with such powers within the limits of the county wherein such deputy forest fire wardens reside. Patrolmen, special patrolmen, fire wardens, deputy fire wardens, and all police officers are hereby empowered to make arrests, without warrant, of persons violating this act.

Duties of State Forest Fire Warden.

The state forest fire warden shall enforce all laws for the preservation of forests within the state, investigate the origin of all forest fires, cause to be posted not later than the month of May each year, in all forest counties, copies of all laws and regulations for the protection of such forests. The expenses incurred in carrying out these provisions shall be met as are other expenses of cruising or caring for the state lands.

Closed Season for Burning Slashings, etc.

It shall be the duty of all boards of deputy forest fire wardens to fix each

year in timber counties, for their respective counties, a close season during which no person shall burn any slashing or chopping without first obtaining permission in writing from the county board or its duly appointed representative. Such permission shall be given only upon compliance with such regulations as the board may prescribe, one of which regulations shall be notice to all owners or tenants of adjoining lands residing thereon giving the time and place of the proposed burning.

Permission to Burn may be had—How.

During the close season when timber lands are in danger from fire the deputy fire warden[s] shall put out, or endeavor to put out, or stop the spreading of any forest fires in their respective districts. When any person shall have obtained permission from the county board of forest fire wardens to burn a clearing or slashings made for the purpose of clearing land, he may apply to the deputy fire warden or person acting as such, who shall furnish him with a sufficient number of men to aid him in keeping the fire from spreading. Said men shall be detailed only till such time as the party burning may be able to keep the fire in control himself.

Notice of Closed Season of Fires to be Published.

In addition to the regular publication of the county commissioners' proceedings, the county commissioners, acting as such board, shall cause to be posted in all forest areas notices of warning, giving the date of the close season and all rules made by such board for the preservation of forests. All expenses incurred by counties in carrying out these provisions shall be paid as other county current expenses are paid.

Duties of Deputies.

It shall be the duty of duly appointed deputies to patrol their districts, visit all parts of all roads and trails and frequented places and camps as often as possible; post all notices furnished by the state forest fire warden or by the county board, posting such notices on all roads, trails, frequented places and camps; warn campers or other users of fire; see that all locomotives and engines are provided with spark-arresters in accordance with the law; extinguish small or smoldering fires; impress help to stop conflagrations; see that all laws for the protection of forests are enforced; and arrest and cause to be prosecuted all malicious offenders. Any person refusing to render needed assistance when called upon for such assistance by any patrolman or deputy forest fire warden shall be punished by a fine of not less than five nor more than twenty dollars, and stand committed until the fine imposed is paid. Any person who shall willfully or heedlessly deface, destroy or remove any warning placard or notice posted under the requirements of this act shall be deemed guilty of a misdemeanor, and shall be punished by a fine of not exceeding one hundred dollars for each such offense, or by imprisonment in the county jail not exceeding three months.

Penalties.

Any person who shall on any land within this state set and leave any fire that shall spread and damage or destroy property of any kind not his own shall be punished by a fine of not less than ten nor more than five hundred dollars. If such fire be set or left maliciously, whether on his own or other lands, with intent to destroy property not his own, he shall be punished by a fine of not less than twenty nor more than one thousand dollars, or imprisonment of not less than one month nor more than one year, or by both such fine and imprisonment, and shall be liable for damages in civil suit. All fines collected under this act shall be paid into the county treasury. This section shall not apply to back fires reasonably set for the saving of life and property. During the close season, any person who shall kindle a fire on land not his own, in or dangerously near any forest, and leave same unquenched, or who shall be a party thereto or who shall by throwing away any lighted cigars, matches, or by the use of firearms, or in any other manner, start a fire upon forest lands not his own and leave same unquenched, shall upon conviction, be fined not less than ten dollars nor more than one hundred dollars, or be imprisoned in the county jail not exceeding two months.

Unlawful to Use Engines Without Spark-arresters.

It shall be unlawful for any person or corporation to operate any spark emitting logging locomotive, logging or farm engine in this state at any time during the months of June to October inclusive, or for any person to operate any logging or other engine in the immediate vicinity of any forest slashing or chopping during the close season, without such locomotive or engine is provided with and uses a safe and suitable device for arresting sparks. Any person, company or corporation who shall fail to provide and use such spark-arrester during the periods herein mentioned shall upon conviction pay a fine for each engine or locomotive for each day operated without such arrester, of not less than ten nor more than fifty dollars, and shall be prohibited from further use of such locomotive or engines in such months or season until such arrester is provided and used therewith. Fines from this source shall be paid into the current expense fund of the county treasury. Patrolmen and wardens shall report any lack of sufficient arresters to the prosecuting attorney of their county, and the superior court of that county where suit is first instituted shall have jurisdiction of the offense.

Exceptions.

Nothing in this act shall be construed to prevent any person owning land, or person or persons employed by him, from burning stumps, logs, drift or brush heaps when such are burned in small quantities, isolated from other inflammable material, under personal supervision, and such other safeguards as shall prevent said fire from spreading.

An emergency exists and this act shall take effect immediately. [Approved Mar. 16, 1903; L. 1903, p. 205.]

§ 3145: Mines and Mining—State Geological Survey Established—Purposes of.

There is hereby established a state geological survey of the state of Washington, which shall be under the direction of the board of geological survey of the state of Washington, which is hereby established, composed of the governor, the lieutenant-governor, the state treasurer, the president of the university of Washington, and the president of the Washington agricultural college and school of science, who shall serve without compensation, but shall be reimbursed for actual expenses incurred in the performance of their official duties, and the said board shall have general charge of the survey, and shall appoint as superintendent of the survey a geologist of established reputation, to be known as the state geologist, and upon his nomination such assistants and employees as the said board may deem necessary and the said board shall also determine the compensation of all persons employed by the survey, and may remove them at will.

The said survey shall have for its object:

(1) An examination of the economic products of the state, viz.: the gold, silver, copper, lead and iron ores, as well as building stones, clays, coal and all mineral substances of value.

(2) An examination and classification of the soils, and the study of their adaptability to particular crops.

(3) The investigation and report upon the water supplies, artesian wells, the water power of the state, gauging the streams, etc., with reference to their application for irrigation and other purposes.

(4) An examination and report upon the occurrence of different road building material.

(5) An examination of the physical features of the state with reference to their practical bearing upon the occupations of the people.

(6) The preparation of special geological and economic maps to illustrate the resources of the state.

(7) The preparation of special reports with necessary illustrations and maps, which shall embrace both the general and detailed description of the geology and natural resources of the state.

(8) The consideration of such other kindred scientific and economic questions as in the judgment of the board shall be deemed of value to the people of the state.

§ 3146. Report of.

The board shall cause to be prepared a report to the legislature before each regular meeting of the same, showing the progress and condition of the survey, together with such other information as they may deem necessary and useful or as the legislature may require.

The regular and special reports of the survey with proper illustrations and maps, shall be printed as the board may direct, and the reports shall be distributed or sold by the said board as the interests of the state and of science demands; and all money obtained by the sale of reports shall be paid into the state treasury.

§ 3147. Distribution of Materials Gathered.

All materials collected, after having served the purpose of the survey, shall be distributed by the board to the university of Washington, the Washington agricultural college and school of science, the normal schools, and the leading high schools of the state in such a manner as to be of the greatest advantage to the educational interests of the state. [Approved Mar. 18, 1901; L. 1901, p. 334.]

§ 3148. Meetings of Board.

The board of geological survey shall meet for organization within thirty days after the passage of this act. The regular meetings of the board shall be on the first Wednesday in April and the first Wednesday in November of each year.

§ 3149. Powers of Board.

The said board of geological survey is hereby authorized to make provisions for topographic, geologic and hydrographic surveys of the state of Washington in co-operation with the United States geological survey in such manner as in the opinion of the said board will be of the greatest benefit to the agricultural, industrial and geological requirements of the state of Washington: Provided, That the director of the United States geological survey shall agree to expend on the part of the United States upon said surveys a sum equal to that expended by the said board. [As amended by act of 1903; L. 1903, c. 157, p. 331.]

§ 3151a. Mining Claims and Rules of Mining Districts—Notice of Location.

The discoverer of a lode shall within ninety (90) days from the date of discovery, record in the office of the auditor of the county in which such lode is found, a notice containing the name or names of the locators, the date of the location, the number of feet in length claimed on each side of the discovery, the general course of the lode and such a description of the claim or claims located by reference to some natural object or permanent monument as will identify the claim.

Discovery Shaft—Boundaries.

Before filing such notice for record, the discoverer shall locate his claim by first sinking a discovery shaft upon the lode, to the depth of ten (10) feet from the lowest part of the rim of such shaft at the surface, and shall post at the discovery at the time of discovery a notice containing the name of the lode, the name of the locator or locators, and the date of discovery, and shall mark the surface boundaries of the claim by placing substantial posts or stone monuments bearing the name of the lode and date of location; one post or monument must appear at each corner of such claim; such posts or monuments must be not less than three (3) feet high; if posts are used they shall be not less than four inches in diameter and shall be set in the ground in a substantial manner. If any such claim be located on ground that is covered wholly or in part

with brush or trees, such brush shall be cut and trees be marked or blazed along the lines of such claim to indicate the location of such lines.

Cut or Tunnel in Lieu of Shaft.

Any open cut or tunnel having a length of ten (10) feet, which shall cut a lode at the depth of ten (10) feet below the surface, shall hold such lode the same as if a discovery shaft were sunk thereon, and shall be equivalent thereto.

Definition of Terms.

The term "lode" as used in this act shall be construed to mean ledge, vein or deposit.

Amended Certificate of Location.

If at any time the locator of any quartz or lode mining claim heretofore or hereafter located, or his assigns, shall learn that his original certificate was defective or that the requirements of the law had not been complied with before filing, or shall be desirous of changing his surface boundaries or of taking in any additional ground which is subject to location, or in any case the original certificate was made prior to the passage of this law, and he shall be desirous of securing the benefit of this act, such locator or his assigns may file an amended certificate of location, subject to the provisions of this act, regarding the making of new locations.

Proof of Assessment Work.

Within thirty (30) days after the expiration of the period of time fixed for the performance of annual labor or the making of improvements upon any quartz or lode mining claim or premises, the person in whose behalf such work or improvement was made or some person for him knowing the facts, shall make and record in the office of the county auditor of the county wherein such claims are situate an affidavit or oath of labor performed on such claim. Such affidavit shall state the exact amount and kind of labor, including the number of feet of shaft, tunnel or open cut made on such claim, or any other kind of improvements allowed by law or by rules of mining districts made thereon.

Effect of Record of Proof.

Such affidavit when so recorded shall be prima facie evidence of the performance of such labor or the making of such improvements, and such original affidavit after it has been recorded, or a certified copy of record of same, shall be received as evidence accordingly by all the courts of this state.

Relocation—How Made.

The relocation of forfeited or abandoned quartz or lode claims shall only be made by sinking a new discovery shaft and fixing new boundaries in the same manner and to the same extent as is required in making a new location, or the relocater may sink the original discovery shaft ten feet deeper than it was at the date of commencement of such relocation, and shall erect new, or make the old monuments the same as originally required; in either case a new location monument shall be erected and the location certificate shall state if the whole or any part of the new location is located as abandoned property.

Limitation of Rule as to Shafts.

The provision herein, relating to discovery shafts, shall not apply to any mining location west of the summit of the Cascade mountains.

Location of Placer Claims—How Made.

The discoverer of placers or other forms of deposits subject to location and appropriation under mining laws applicable to placers shall locate his claim in the following manner:

First. He must immediately post in a conspicuous place at the point of discovery thereon, a notice or certificate of location thereof, containing (a) the name of the claim; (b) the name of the locator or locators; (c) the date of discovery and posting of the notice hereinbefore provided for, which shall be considered as the date of the location; (d) a description of the claim by reference to legal subdivisions of sections, if the location is made in conformity with the public surveys, otherwise, a description with reference to some natural object or permanent monuments as will identify the claim; and where such claim is located by legal subdivisions of the public surveys, such location shall, notwithstanding that fact, be marked by the locator upon the ground the same as other locations.

Second. Within thirty (30) days from the date of such discovery he must record such notice or certificate of location in the office of the auditor of the county in which such discovery is made, and so distinctly mark his location on the ground that its boundaries may be readily traced.

Third. Within sixty (60) days from the date of discovery, the discoverer shall perform labor upon such location or claim in developing the same to an amount which shall not be equivalent in the aggregate to at least ten (10) dollars' worth of such labor for each twenty acres, or fractional part thereof, contained in such location or claim: Provided, however, That nothing in this subdivision shall be held to apply to lands located under the laws of the United States as placer claims for the purpose of the development of petroleum and natural gas and other natural oil products.

Fourth. Such locator shall, upon the performance of such labor, file with the auditor of the county an affidavit showing such performance and generally the nature and kind of work so done.

Effect of Record—Evidence.

The affidavit provided for in the last section, and the foresaid placer notice or certificate of location when filed for record, shall be prima facie evidence of the facts therein recited. A copy of such certificate, notice or affidavit certified by the county auditor shall be admitted in evidence in all actions or proceeding with the same effect as the original and the provisions of sections six (6) and seven (7) of this act shall apply to placer claims as well as lode claims.

All locations of quartz or placer formations or deposits hereafter made shall conform to the requirements of this act in so far as the same are respectively applicable thereto.

Mining Districts—Rules and Regulations.

Any mining district organized in the state of Washington in accordance with the laws of the United States, shall have power to make rules and regulations for such mining district, providing such rules and regulations do not conflict with the laws of the state of Washington or of the United States.

Road Building as Assessment Work.

Any mining district shall have the power to make road building to mining claims within such district applicable as assessment work, or improvement upon such claims: Provided, That rules pertaining to such road building shall be made only at a public meeting of the miners of such district regularly called by the mining recorder of such district: Provided further, That such meeting shall be attended by at least twelve (12) property holders of such district, and that no such rule can be made without the assent of the majority of the property holders of such district, who are present at such meeting. Such meeting to designate where, when and how such road work shall be done, and shall designate some one of their number who shall superintend such road building or construction, and who shall receipt for such labor to the performer thereof, such receipts to be filed with the county auditor of the county in which such work is performed by the holder or holders of such receipts, and shall be received as prima facie evidence of labor performed as annual assessment work upon such claim or claims, as may be designated by an affidavit or oath of labor as provided for in section six (6) of this act: Provided, That nothing in this act can be construed as being mandatory upon any owner or holder of mining property to perform labor upon any such road. [Approved Mar. 8, 1899; L. 1899, p. 69.]

§ 3154. **Work required annually on claim.**—Where the necessary amount of assessment work was done on a mining claim during a certain year, the presumption would be that it was done by the co-owners, or some of them, in the absence of proof to the contrary, although the evidence may not clearly establish by whom the work was done: *Yarwood v. Johnson*, 29 Wash. 643, 70 Pac. 123.

§ 3165. **Ventilation.**—In an action to recover for the death of a workman in a coal mine caused by suffocation, an instruction was proper which set forth Ballinger's Code, section 3165, to the effect that the operator of every coal mine shall provide a good and sufficient amount of ventilation for such persons as may be employed therein, and then charged the jury that "the purpose of this law is to provide a reasonably safe place for the men to work in, and that the ventilation

of the working places of the men shall be such as to maintain them reasonably safe from dangerous gases by a good and sufficient ventilation of the mine. This is a positive duty imposed upon the operator and owner of the mine, and for the neglect of this duty the law holds such operator or owner liable if damages result therefrom": *Czarecki v. Seattle etc. Ry. Co.*, 30 Wash. 288, 70 Pac. 750.

§ 3178. **Owner's duty to furnish timber.** A positive statutory duty is imposed upon the operator of the coal mine, and where a neglect of such duty proximately contributes to an injury received by a miner, the operator is liable, even if the miner continued work after knowledge of the failure to supply the timbers, since the doctrine of assumption of risk is inapplicable in the face of the positive injunction of the statute: *Green v. Western Am. Co.*, 30 Wash. 87, 70 Pac. 310.

§ 3242. **Shipping—Pilots—Violations of Law Governing.**

That it shall be the special duty of the pilot commissioners, upon complaint being made to them of any violation of the provisions of this act, to notify the prosecuting attorney for the county in which the commissioners reside, whose duty it shall be forthwith to file an information and prosecute such violation of

this act, and any person piloting a vessel in any of the waters aforementioned, without having a valid license, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be imprisoned not to exceed six months and shall further forfeit and pay for the use of the common school fund of the state all the fees and emoluments received by such person for any such services, to be recovered in a civil action in the name of the state of Washington in any court of competent jurisdiction.

An emergency exists and this act shall take effect and be in force from and after its passage and approval by the governor. [Amendment, approved Feb. 25, 1901; L. 1901, p. 17.]

[§§ 3291, 3292, 3293, 3294, 3295, repealed by act of March 16; 1901; Laws 1901, p. 262.]

§ 3296. Creating a Labor Bureau.

Commissioner of Labor—How Appointed.

A commissioner of labor shall be appointed by the governor; he, together with the inspector of coal mines, shall constitute a bureau of labor. On the first Monday in April, in 1897, and every four years thereafter, the governor shall appoint, a suitable person to act as commissioner of labor, and as factory, mill and railroad inspector who shall hold office until his successor is appointed and qualified.

§ 3297. Duties of Labor Bureau.

It shall be the duty of such officer and employees of the said bureau to cause to be enforced all laws regulating the employment of children, minors and women, all laws established for the protection of the health, lives and limbs of operators in workshops, factories, mills and mines, on railroads and other places, and all laws enacted for the protection of the working classes, and declaim it a misdemeanor on the part of the employers to require as a condition of employment the surrender of any rights or citizenship, laws regulating and prescribing the qualifications of persons in trades and handicrafts, and similar laws now in force or hereafter to be enacted. It shall also be the duty of officers and employees of the bureau to collect, assort, arrange and present in biennial reports to the legislature, on or before the first Monday in January, statistical details relating to all departments of labor in the state; to the subjects of corporations, strikes or other labor difficulties; to trade unions and other labor organizations and their effect upon labor and capital; and to such other matters relating to the commercial, industrial, social, educational, moral and sanitary conditions of the laboring classes, and the permanent prosperity of the respective industries of the state as the bureau may be able to gather. In its biennial report the bureau shall also give account of all proceedings of its officers and employees which have been taken in accordance with the provisions of this act or of any other acts herein referred to, including a statement of all violations of law which have been observed, and the proceedings under the same, and shall join with such accounts and such remarks, suggestions and recommendations as the commissioner may deem necessary.

§ 3298. Duties of Employers.

It shall be the duty of every owner, operator or manager of every factory, workshop, mill, mine or other establishment where labor is employed, to make to the bureau, upon blanks furnished by said bureau, such reports and returns as the said bureau may require, for the purpose of compiling such labor statistics as are authorized by this act, and the owner or business manager shall make such reports and returns within the time prescribed therefor by the commissioner of labor, and shall certify to the correctness of the same. In the reports of said bureau no use shall be made of the names of individuals, firms or corporations supplying the information called for by this section, such information being deemed confidential, and not for the purpose of disclosing personal affairs, and any officer, agent or employee of said bureau violating this provision shall be fined in the sum not exceeding five hundred dollars, or being imprisoned for not more than one year.

§ 3299. Powers of Commissioner.

The commissioner of the bureau of labor shall have the power to issue subpoenas, administer oaths and take testimony in all matters relating to the duties herein required by such bureau, such testimony to be taken in some suitable place in the [vicinity] to which testimony is applicable. Witnesses subpoenaed and testifying before any officer of the said bureau shall be paid the same fees as witnesses before a superior court, such payment to be made from the contingent fund of the bureau. Any person duly subpoenaed under provisions of this section shall willfully neglect or refuse to attend or testify at the time and place named in the subpoena, shall be guilty of a misdemeanor, and, upon conviction thereof, before any court of competent jurisdiction, shall be punished by a fine not less than twenty-five dollars or more than one hundred dollars, or by imprisonment in the county jail not exceeding thirty days.

§ 3300. Powers of Bureau.

The commissioner of labor, the coal mine inspector or any employee of the bureau of labor, shall have power to enter any factory, mill, mine, office, workshop or public or private works at any time for the purpose of gathering facts and statistics such as are contemplated by this act, and to examine into the methods of protection from danger to employees, and the sanitary conditions in and around such buildings and places and make a record thereof, and any owner or occupant of said factory, mill, mine, office or workshop or public or private works, or his agent or agents, who shall refuse to allow an inspector or employee of the said bureau to enter, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, before any court of competent jurisdiction, shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars, or be imprisoned in the county jail not to exceed ninety days, for each and every offense.

§ 3301. Records, How Disposed of.

No report or return made to the said bureau in accordance with the provisions of this act, and no schedule, record or document gathered or returned

by the commissioner or inspector, thereof, such reports, schedules and documents being declared public documents. At the expiration of the period of two years above referred to in this section, all records, schedules and papers accumulating in the said bureau that may be considered of no value by the commissioner may be destroyed: Provided, The authority of the governor be first obtained for such destruction.

§ 3302. Printing Reports.

The biennial reports of the bureau of labor, provided for by section 2 of this act, shall be printed in the same manner and under the same regulations as the reports of the executive officers of the state: Provided, That not less than five hundred copies of the report shall be distributed, as the judgment of the commissioner may deem best. The blanks and other stationery required by the bureau of labor in accordance with the provisions of this act shall be furnished by the secretary of the state, and shall be paid for from the printing fund of the state.

§ 3304. Salary of Commissioner.

The salary of the commissioner of labor, provided for in this act, shall be eighteen hundred dollars (\$1,800) per annum, and he shall be allowed his actual and necessary traveling and incidental expenses.

§ 3304a. Consolidation of Powers.

All the powers and duties heretofore exercised by the assistant commissioner of labor and the factory, mill, and railway inspector are hereby devolved on the commissioner of labor.

§ 3304b. Repeal—Offices Abolished.

The act approved March 3, 1897, being chapter 29, is hereby repealed; the office of the assistant commissioner of labor and factory, mill and railway inspector is hereby abolished. An emergency is declared to exist, and this act shall take effect the first Monday in April, 1901. [Approved Mar. 16, 1901; L. 1901, p. 132.]

§ 3322a. Protection to Employees—Railway Employees.

Any person or persons, railroad companies or corporations, owning or operating a railroad or railroads in this state, shall be and are hereby required on or before the first day of October, 1899, to so adjust, fill, block and securely guard the frogs, switches and guard rails on their roads as to protect and prevent the feet of employees and other persons from being caught therein.

Any person or persons, railroad companies or corporations owning or operating a railroad or railroads in this state, shall be liable for any damage received from a failure to comply with the provisions of this act; such damages to be recovered by the parties entitled to recover as provided in sections 137, 138 and 139 of volume 2 of Hill's Annotated Codes and Statutes of Washington, being

sections 4827, 4828 and 4829, Ballinger's Annotated Codes and Statutes of Washington.

Any person or persons, railroad companies or corporations, owning or operating any railroad in this state, failing to comply with the provisions of this act within the time limited, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not less than five hundred dollars nor more than two thousand dollars. [Approved Mar. 6, 1899; L. 1899, p. 49.]

§ 3322b. Hours Constituting Day's Labor.

Hereafter eight hours in any calendar day shall constitute a day's work on any work done for the state or any county or municipality within the state, subject to conditions hereinafter provided.

Public Contract Work Governed by.

All work done by contract or subcontract on any building or improvements or works on roads, bridges, streets, alleys or buildings for the state or any county or municipality within the state, shall be done under the provisions of this act: Provided, That in cases of extraordinary emergency, such as danger to life or property, the hours for work may be extended, but in such case the rate of pay for time employed in excess of eight hours of each calendar day, shall be one and one-half times the rate of pay allowed for the same amount of time during eight hours' service. And for this purpose this act is made a part of all contracts, subcontracts or agreements for work done for the state or any county or municipality within the state.

Penalty.

Any contractor, subcontractor, or agent of contractor or subcontractor, foreman or employer who shall violate the provisions of this act, shall be deemed guilty of misdemeanor and upon conviction shall be fined in a sum not less than twenty-five dollars nor more than two hundred dollars, or with imprisonment in the county jail for a period of not less than ten days nor more than ninety days, or both such fine and imprisonment, at the discretion of the court. [Approved Mar. 13, 1899; L. 1899, p. 163.]

§ 3322c. Female Employees—Hours Constituting Day's Labor.

That no female shall be employed in any mechanical or mercantile establishment, laundry, hotel or restaurant in this state more than ten hours during any day. The hours of work may be so arranged as to permit the employment of females at any time so that they shall not work more than ten hours during the twenty-four.

Seats for.

Every employer in establishments where females are employed shall provide suitable seats for them and shall permit the use of such seats by them when they are not engaged in the active duties for which they are employed.

Penalty.

Any employer, overseer, superintendent, or other agent of any such employer who shall violate any of the provisions of this act, shall, upon conviction

thereof be fined for each offense in a sum not less than ten dollars nor more than twenty-five dollars. [Approved Mar. 11, 1901; L. 1901, p. 118.]

Laws 1901, page 118, limiting hours of labor of females.—The act of 1901 regulating and limiting the hours of employment of females in any mechanical or mercantile establishment (Laws 1901, p. 118), by forbidding their employment for more than ten hours during any day, is a legiti-

mate exercise of the police power of the state, enacted for the welfare of society at large, and therefore constitutional, although a restriction to some extent upon the right of women to contract their labor: *State v. Buchanan*, 29 Wash. 602, 70 Pac. 52.

§ 3322d. Street-car Employees—Must be Competent.

Hereafter street railway or street-car companies, or street-car corporations, shall employ none but competent men to operate or assist as conductors, motormen or gripmen upon any street railway, or street-car line in this state.

Defining Competent.

A man shall be deemed competent to operate or assist in operating cars or (dummies) usually used by street railway or street-car companies, or corporations, only after first having served at least three days under personal instruction of a regularly employed conductor, motorman or gripman on a car or dummy in actual service on the particular street railway or street-car line for which the service of an additional man or additional men may be required: Provided, That during a strike on the street-car lines the railway companies may employ competent men who have not worked three days on said particular street-car line.

Penalties.

Any violation of section 1 of this act by the president, secretary, manager, superintendent, assistant superintendent, stockholder or other officer or employee of any company or corporation owning or operating any street railway or street-car line or any receiver of street railway or street-car company, or street railway or street-car corporations appointed by any court within this state to operate such car line shall, upon conviction thereof, be deemed guilty of a misdemeanor, and subject the offender to such offense to a fine in any amount not less than fifty dollars nor more than two hundred dollars, or imprisonment in the county jail for a term of thirty days, or both such fine and imprisonment at the discretion of the court. [Approved Mar. 16, 1901; L. 1901, p. 215.]

§ 3322e. Protection from Dangerous Machinery.

That any person, corporation or association, operating a factory, mill or workshop where machinery is used, shall provide and maintain in use proper belt shifters or other mechanical contrivances for the purpose of throwing on or off belts on pulleys, proper safeguards for all vats, pans, trimmers, cut-off, gang edgers, and all other saws that can be guarded advantageously, planers, cogs, gearings, belting, shafting, couplings, set screws, live rollers, conveyors, manglers in laundries and machinery of other or similar description. Exhaust fans of sufficient power shall be provided in the discretion of the commissioner of labor for the purpose of carrying off dust from emery wheels, grind stones and other machinery creating dust, where same is operated in an inclosed room or place.

If a machine or any part thereof is in a dangerous condition, or is not properly guarded, the use thereof is prohibited and a notice to that effect shall be attached thereto. Such notice shall not be moved until the machine is made safe and the required safeguards provided.

Protection at Places of Danger.

All hoistways, hatchways, elevator wells and wheel holes, as well as fly wheels and stairways in factories, mills, workshops, storehouses, warerooms or stores, shall be securely fenced, inclosed or otherwise protected and due diligence shall be used to keep all such means of protection closed, except when it is necessary to have the same open, that the same may be used.

Ventilation.

That any person, corporation or association operating a factory, mill, or workshop where machinery is used, shall provide in each workroom thereof proper and sufficient means of ventilation.

Penalty.

Any person, corporation or association who violates or omits to comply with any of the foregoing requirements or provisions of this act, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than twenty-five nor more than one hundred dollars, or by imprisonment for not less than fifteen days nor more than ninety days.

Copy of Act to be Posted.

A copy of this act, together with the name and address of the commissioner of labor printed in a legible manner, shall be kept posted in each department of every factory, mill or workshop and in the office of every public and private work, upon the employer or his agent or superintendent being supplied with sufficient copies thereof by the commissioner of labor. [Approved Mar. 6, 1903; L. 1903, p. 40.]

§ 3322f. Eight Hour Policy Declared—Emergency Defined.

That it is a part of the public policy of the state of Washington that all work "by contract or day labor done" for it, or any political subdivision created by its laws, shall be performed in work days of not more than eight hours each, except in cases of extraordinary emergency. No case of extraordinary emergency shall be construed to exist in any case where other labor can be found to take the place of labor which has already been employed for eight hours in any calendar day.

Contracts to Contain Cancellation Clause.

All contracts for work for the state of Washington, or any political subdivision created by its laws, shall provide that they may be canceled by the officers or agents authorized to contract for or supervise the execution of such work, in case such work is not performed in accordance with the policy of the state relating to such work.

Duty of Officers as to Cancellation.

It is made the duty of all officers or agents authorized to contract for work to be done in behalf of the state of Washington, or any political subdivision created under its laws, to stipulate in all contracts as provided for in this act, and all such officers and agents, and all officers and agents intrusted with the supervision of work performed under such contracts, are authorized, and it is made their duty, to declare any contract canceled, the execution of which is not in accordance with the public policy of this state as herein declared. [Approved Mar. 7, 1903; L. 1903, p. 51.]

§ 3322g. Arbitration of Disagreements.

It shall be the duty of the state labor commissioner upon application of any employer or employee having differences, as soon as practicable, to visit the location of such differences and to make a careful inquiry into the cause thereof and to advise the respective parties, what, if anything, ought to be done or submitted to by both to adjust said dispute and should said parties then still fail to agree to a settlement through said commissioner, then said commissioner shall endeavor to have said parties consent in writing to submit their differences to a board of arbitrations to be chosen from citizens of the state as follows, to wit: Said employer shall appoint one and said employees acting through a majority, one, and these two shall select a third, these three to constitute the board of arbitration and the findings of said board of arbitration to be final.

Proceedings in—Before Whom.

The proceedings of said board of arbitration shall be held before the commissioner of labor who shall act as moderator or chairman, without the privilege of voting, and who shall keep a record of the proceedings, issue subpoenas and administer oaths to the members of said board, and any witness said board may deem necessary to summon.

Notice.

Any notice or process issued by the board herein created, shall be served by any sheriff, coroner or constable to whom the same may be directed, or in whose hands the same may be placed for service.

Compensation.

Such arbitrators shall receive five dollars per day for each day actually engaged in such arbitration and the necessary traveling expenses to be paid upon certificates of the labor commissioner out of the fund appropriated for the purpose or at the disposal of the bureau of labor applicable to such expenditure.

Failure of Arbitration—Sworn Statement to Commissioner—Publication of.

Upon the failure of the labor commissioner, in any case, to secure the creation of a board of arbitration, it shall become his duty to request a sworn statement from each party to the dispute of the facts upon which their dispute and their reasons for not submitting the same to arbitration are based. Any sworn statement made to the labor commissioner under this provision shall

be for public use and shall be given publicly in such newspapers as desire to use it.

Appropriation.

There is hereby appropriated out of the state treasury from funds not otherwise appropriated the sum of three thousand dollars, or so much thereof as may be necessary, to carry out the provisions of this act. In case the funds herein provided are exhausted and either party to a proposed arbitration shall tender the necessary expenses for conducting said arbitration, then it shall be the duty of the state labor commissioner to request the opposite party to arbitrate such differences in accordance with the provisions of this act.

An emergency exists and the act shall take effect immediately. [Approved Mar. 9, 1903; L. 1903, p. 71.]

§ 3331. Fisheries—Fish Commissioner—Salary of.

The fish commissioner shall receive an annual salary of two thousand dollars, to be paid in monthly installments by the state treasurer, and he shall be allowed his actual expenses of travel in the performance of his duties, not to exceed one thousand dollars in any one year. The deputies shall receive a salary of twelve hundred dollars each per year, to be paid in monthly installments by the state treasurer, and they shall be allowed their actual expenses of travel in the performance of their duty, not to exceed six hundred dollars per annum each; and no payment of salary or traveling expenses shall be made by the state treasurer to any deputy fish commissioner except upon a certificate of the fish commissioner that he has performed his duty in all respects to the satisfaction of such fish commissioner. [Amendment, approved Mar. 18, 1901; L. 1901, p. 270.]

§ 3332. Deputy Fish Commissioners—Bonds—Duties of.

Each deputy fish commissioner shall give bonds in the sum of two thousand dollars, conditioned on the faithful performance of their duties, respectively, such bonds to be subject to the approval of the fish commissioner. The fish commissioner shall issue to his deputies such general and special orders and instructions in the execution of their duties under the law as he shall deem necessary; and he shall assign one deputy to duty in the lower Puget Sound district, and one to the Columbia river district; the third deputy being assigned to office duty and shall be considered the office deputy, but the above assignment shall not relieve any deputy from the performance of duty in any other part of the state when his services may be needed.

An emergency exists and this act shall take effect immediately. [Amendment, approved Mar. 18, 1901; L. 1901, p. 272.]

§ 3342a. State Fish Hatchery—Authorizing the Transfer of Baker Fish Hatchery to United States.

The state fish commission is hereby authorized to sell and transfer to the United States all the property owned by the state of Washington, and located in Whatcom county, known as the Baker Lake fish hatchery.

The state fish commission shall not sell or transfer the property mentioned in section one of this act for a less sum than the actual cost incurred by the state in the construction and improvement of such property.

The money received by the state fish commission for such property shall be placed to the credit of the fish hatchery fund of the state, to be expended as other moneys belonging to such fund.

Whereas, the Congress of the United States has made an appropriation for a fish hatchery in the state of Washington, to be selected and maintained by the United States fish commission, and such fish commission has selected as a site the Baker Lake hatchery, and desires to purchase the state's property and to immediately enlarge the capacity and begin the propagation of salmon at such hatchery, an emergency is hereby declared to exist, and this act shall take effect and be in force from and after its passage. [Approved Feb. 23, 1899; L. 1899, p. 31.]

§ 3342b. Fish Hatcheries—Establishment of.

At Wenatchee.

There is hereby appropriated out of the fish hatchery fund in the treasury of the state of Washington the sum of forty-four thousand dollars (\$44,000) for the purpose of constructing fish hatcheries as follows, to wit: \$5,000 for the construction of a fish hatchery on the Wenatchee river at a point on said river to be hereafter determined by the fish commission in its discretion, said appropriation to be available as follows: \$3,000 for the year 1899, \$2,000 for purposes of improvements, enlargements or repairs in the year 1900;

At Nooksack.

\$5,000 for a fish hatchery on the Nooksack river or tributaries thereto at a point on said stream or streams to be hereafter determined by the fish commission, said appropriation to be available as follows: \$3,000 for construction purposes in the year 1899, \$2,000 for improvements, enlargements or repairs in the year 1900;

At Skokomish.

\$5,000 for a fish hatchery on the Skokomish river or tributaries thereto at a point to be hereafter determined by the fish commission, to be available as follows: \$3,000 for construction purposes in the year 1899, \$2,000 for improvements, enlargements or repairs in the year 1900;

At Willapa Harbor.

\$4,000 for a fish hatchery on Willapa Harbor at some point to be hereafter determined by the fish commission, to be available as follows: \$2,500 for construction purposes in the year 1899, \$1,500 for improvements, enlargements or repairs in the year 1900;

On Wind River.

\$2,500 for a fish hatchery on Wind river at a point to be hereafter determined by the fish commission, to be available as follows: \$1,500 for construction purposes in the year 1899, \$1,000 for improvements, enlargements or repairs in the year 1900;

On Samish Lake.

\$1,500 for a fish hatchery on Samish lake to be constructed or purchased by the fish commissioner;

On Little Spokane River.

\$2,000 for a fish hatchery on Little Spokane river to be located at a point hereafter to be determined by the fish commission;

On Snohomish River.

\$3,000 for a fish hatchery on Snohomish river to be located at a point hereafter to be determined by the fish commission, to be available as follows: \$2,000 for construction purposes in the year 1899, \$1,000 for improvements, enlargements or repairs in 1900;

On White River.

\$2,000 for a fish hatchery on White river to be located at a point to be hereafter determined by the fish commission;

On Methow River.

\$2,000 for a fish hatchery to be located on the Methow river at a point hereafter to be determined by the fish commission;

On Nisqually.

\$2,000 for a fish hatchery on the Nisqually river to be located at a point to be hereafter determined by the fish commission;

On Colville River.

\$2,000 for a fish hatchery on the Colville river to be located at a point hereafter to be determined by the fish commission;

On Klickitat River.

\$2,000 for a fish hatchery on the Klickitat river to be located at a point to be hereafter determined by the fish commission;

On Stillaguamish River.

\$2,000 for a fish hatchery on the Stillaguamish river to be located at a point hereafter to be determined by the fish commission;

On Dungeness River.

\$2,000 for a fish hatchery on the Dungeness river to be located at a point hereafter to be determined by the fish commission;

On Skagit River.

\$2,000 for a fish hatchery to be located on the Skagit river or tributaries at a point hereafter to be determined by the fish commission:

Order of Priority.

Provided, That said fish hatcheries shall be constructed in the order that appears in the above segregation, the first one appearing upon the list to be constructed first and the others in the order following.

Conditions Precedent to.

No warrants for the construction of said fish hatcheries shall be drawn against the treasury nor shall the work of construction of said fish hatcheries be begun nor a contract let therefor when there shall be in the fish hatchery fund in the state treasury a sum less than the ordinary operating expenses of the various fish hatcheries, completed and in operation, for the period of six months in advance: And provided, That construction shall not be begun on any of said fish hatcheries nor shall a contract for such construction be let when the amount appropriated for the construction of said fish hatcheries shall not be in the said fish hatchery fund as cash on hand over and above the operating expenses of [the] then existing fish hatcheries as immediately before provided: And provided further, That at no time shall any warrant be drawn against the fish hatchery fund in the treasury for any purpose contemplated in this act when there is not sufficient cash money on hand in the treasury to pay the same.

How Disbursements Made.

All moneys appropriated in this act shall be disbursed as follows: Vouchers for all expenditures shall be audited and approved by the state fish commission before presentation to the state auditor. [Approved Mar. 13, 1899; L. 1899, p. 267.]

§ 3342c. Private Fish Hatcheries—Authorization of.

Any riparian proprietor may establish a private fish hatchery for the cultivation of food fishes, and for such purpose and use may, within the limits of his own premises, inclose the waters of any river or stream or lake in this state, subject to the conditions and regulations hereinafter provided; and any person lawfully conducting any such private fish hatchery and engaged in the artificial propagation, culture and maintenance of fishes, may take them in his own inclosed waters wherein the same are so cultivated and maintained at any time and for any purpose.

Passageways Required.

Any person, firm or corporation establishing a private fish hatchery and inclosing the waters of a river or stream, as provided in section 1 of this act, shall provide and furnish a suitable passageway along said hatchery for migratory fishes naturally frequenting such waters, above and below such hatchery, and shall so place and construct said inclosure as to allow the passage of boats, saw logs, shingle bolts, cord wood, fencing posts or rails, without unreasonable delay, when such inclosure is upon a river or stream navigable and generally used for the navigation of boats, or for the floating down of logs, fencing posts, or rails: Provided, That if the person, firm or corporation inclosing the waters of a river or stream, as herein provided, is the sole riparian proprietor thereof from such inclosure to and including the source of such river or stream, such person, firm or corporation shall be excepted from the operation of this section, and shall not be required to furnish any passageway for fish or for boats, logs, fencing or other material.

Definition of Private Hatchery.

Any person, firm or corporation engaged in the business of taking fish spawn and the artificial hatching thereof, or in the raising of fry and fish therefrom, in any of the waters or streams of this state, shall be deemed to be conducting a private fish hatchery under the terms of this act.

Approval of Commissioner.

No fish spawn, fry or fish from any private fish hatchery shall be sold under the terms of this act, unless the location and plan of such hatchery, including the character and size of fishway and passage be approved by the fish commissioner, and the same duly licensed as a private fish hatchery.

Sale of Product.

The product of such fish hatchery, fish spawn, fry and fish may be sold at any time of the year by such hatchery or their then vendees after having first complied with the terms of this act and the regulations of the fish commissioner in relation thereto.

License Fee.

Each private fish hatchery before it shall be entitled to the benefits of this act, shall pay an annual license fee of \$25 to the fish commissioner.

Reports.

It shall be the duty of the superintendent or person in charge of any private fish hatchery to make a quarterly report to the state fish commissioner of the amount of spawn, fry and number of fish sold and the name and address of the party receiving the same. It shall be the duty of each person, firm or corporation affected by the provisions of section 8 of this act to render to the fish commissioner of the state of Washington a quarterly report giving a detailed statement showing the amount of spawn, fry and number of fish received from any private hatchery and giving the name and postoffice address of the superintendent or manager of the same.

License to Dealers in Fish—Fee for.

Every person, firm or corporation engaged in the business of buying and selling, packing and preserving or otherwise dealing in trout or other food fish obtained from private hatcheries of this state, shall procure a license for such business from the fish commissioner of the state and shall pay an annual license fee of \$2.50.

Exclusive Right.

No person shall take fish in any manner from the inclosed portion of any river, stream, pond, or other water in which a private fish hatchery is located, or in which fish are artificially propagated, cultivated and maintained under the provisions of this act, without permission of the owner or proprietor of such hatchery.

Disposition of License Fund.

All moneys collected for licenses and fines under the provisions of this act shall be turned into the state treasury and placed in the fish and game protection fund.

Penalties.

Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by imprisonment in the county jail for a period not to exceed six months or by a fine of not more than \$500 or by both such fine and imprisonment.

Tags and Brands Required.

The state fish commissioner shall have authority to require tags, branding or other device attached to all fish sold from private hatcheries.

Repeal.

All acts and parts of acts in conflict with the provisions of this act are hereby repealed. [Approved Mar. 18, 1901; L. 1901, p. 318.]

§ 3342d. Fish Hatcheries on Certain Streams.

That the fish commissioner is hereby authorized and empowered to establish and maintain fish hatcheries on the following streams: Big or Little Skookum bay, Mason county; Big Quilcene river, Jefferson county; Gray's river, Wahkiakum county; Dakota creek, Whatcom county: Provided, That the said streams are suitable for the hatching of salmon. [Approved Mar. 14, 1903; L. 1903, p. 155.]

§ 3347a. Relating to Food Fishes—Devices for Catching Fish—Restriction on Use of.

Hereafter it shall be unlawful to construct, own, operate and maintain within any of the rivers of this state flowing into Puget Sound, and within said bodies of water within a distance of three miles from the mouth of any such rivers, and also within that arm of Puget Sound and body of water known as Deception Pass, or within one-half mile of the west entrance thereof and in any of the other salt waters of this state at a greater depth than sixty-five feet at low tide, any pound net, trap, weir, fish wheel, or other fixed appliance, set lines excepted, for the purpose of catching salmon or other food fishes, and for the purpose of enforcing the provisions of this section, the fish commissioner shall indicate the mouths of said rivers by driving piles therein. It shall also be unlawful hereafter to use any purse net or other like seine within three miles and any drag seine within one mile from the mouth of any of said rivers or within said rivers: Provided, That nothing in this or any other act shall prevent any Indian residing in this state, from taking salmon or other fish by any means at any time for the use of himself and family.

Amended: Chap. 247, Laws '07.
§ 3349a. Licenses for Use of.

The use of pound nets, traps, weirs, fish wheels and other fixed appliances, and purse nets, drag seines and other seines for catching salmon is hereby authorized in all the waters of this state wherein the same is not prohibited by section one, subject to the regulation and license hereinafter provided for or otherwise required by law, and the use of set nets and gill or drift nets, subject

to said license and regulation for said purpose, is authorized in all the waters of this state, except as otherwise provided by law: Provided, however, That no fishing appliances shall be constructed, operated or maintained upon any of the waters of this state or the Columbia river or its tributaries by any person whomsoever, without such person shall have first obtained a license so to do from the fish commissioner of this state, who is hereby authorized to issue said license under the regulations provided by law. A separate license shall be required for each trap, pound net, weir, fish wheel or any other fixed appliance, and for every purse net, purse seine, drag seine or other seine, gill net, drift net or set net, which license shall be numbered and dated, and shall specify the number of the pound net, trap, weir, fish wheel or other fixed appliance, seine, gill net, drift net or set net, which number shall be designated by the said commissioner, and said license shall also contain the name of the person to whom such license shall be granted. No license shall be issued to any person who is not a citizen of the United States, unless such person has declared his intention to become such one year prior thereto, and is and has been for one year immediately prior to the time of the application for license an actual resident of the state of Washington, nor shall any license be issued to any corporation, unless such corporation shall be authorized to do business in this state: Provided, That nothing in this act shall be construed to prevent the issuance of licenses to women, minors of the age of eighteen years or more, or Indians, who possess the qualifications of citizenship and residence hereinbefore required, nor to prevent the renewal of any licenses by persons now holding the same: Provided, Licenses issued by the state of Oregon shall be deemed valid as to gill nets for use on the Columbia river as though issued by the fish commissioner of this state. No more than three licenses shall be issued to any one person, firm or corporation. Licenses may be assigned or transferred to any person or corporation entitled to hold licenses under the provisions of this act: Provided, That notice is given to the fish commissioner of said transfer or assignment by the transferee within twenty days from the date of said transfer or assignment: And provided further, If such notice of transfer is not given such license shall be void. No person or corporation shall own, operate or construct, or cause to be constructed or operated any pound net, trap, weir, fish wheel or other fixed appliance for the catching of salmon on the waters of the Columbia river, or its tributaries, or in any of the waters of the state of Washington, the meshes of which are less than three inches stretch measure.

§ 3350a. License Number to be Posted on Trap, etc.

Any person owning, operating or using any pound net, trap, weir, fish wheel or other fixed appliance for taking salmon, shall cause to be placed in a conspicuous place on said pound net, trap, weir, fish wheel or other fixed appliance, the number designated by the fish commissioner at the time of issuing the license for the operation thereof; said number to consist of black figures, not less than six inches in length, painted on white ground; any person owning, or operating or using any seine, purse net, gill net or set net for the purpose of

taking salmon, shall cause to be branded the corks of each end of the seine, purse net, gill net or set net, and upon the cork nearest the center thereof, the number designated by the fish commissioner at the time of issuing the license for the operation of said seine or net, said number to consist of figures not less than one-half inch in length, and shall also cause to be placed upon each side of the bow of the boat used to operate such seine or net such license number, preceded by a capital "W" the same to consist of black figures not less than six inches in length, painted on white ground. All pound nets or traps shall conspicuously show at night-time, between sunset and sunrise, a bright white light.

§ 3351a. Appliances—Length and Situation of.

No lead of any pound net, trap, fish wheel or other fixed appliance used or operated in the waters of the Columbia river or its tributaries, Willapa Harbor, or Gray's Harbor in this state for catching salmon shall exceed eight hundred feet in length, and in the waters of Puget Sound two thousand five hundred feet in length. There shall be an end passageway of at least thirty feet, and a lateral passageway of at least nine hundred feet, between all pound nets, traps, weirs, fish wheels or other fixed appliances hereafter constructed and placed within the waters of the Columbia river and its tributaries, Willapa Harbor and Gray's Harbor within this state, and there shall be an end passageway of at least six hundred feet and a later[al] passageway of at least twenty-four hundred feet between all pound nets, traps, weirs or other fixed appliances hereafter constructed and placed within the waters of Puget Sound in this state, for the purpose of determining end passageway a line shall be drawn parallel to the general direction of the shore line for one-half mile on either side of a proposed location, which parallel line shall intersect the outer end of any location theretofore made, and maintained as by law provided, and a new location shall be driven at least six hundred feet distant at right angles from such base line.

§ 3351b. License to Fishermen.

Any person, other than minors under eighteen years of age, who desires to work as a fisherman in any of the waters of this state on or with any of the fishing appliances mentioned in this act, whether said person be the owner of an appliance or an employee of an owner, shall obtain a fisherman's license from the fish commissioner of this state as follows: Such applicant shall present in writing to the fish commissioner his application, which application shall be accompanied by the affidavit of said applicant that he is a citizen of the United States, or has declared his intention to become such one year prior to the making of such application and that he is and has been, for six months next preceding such application, a bona fide resident of the state of Washington, or of any adjoining state, and shall pay to the said fish commissioner a license fee of one dollar when said application is presented, and thereupon a license shall issue to such applicant authorizing him to engage in taking and catching fish in any of the waters of the state not prohibited under the provisions of this act. In addition to the license aforesaid, any licensed fisherman desiring to engage in the business of operating a fish trap, pound net, set net, gill net, fish wheel, seine or other appliance not prohibited by law, for the purpose of catching

fish, shall make application in writing to the said fish commissioner, specifying with convenient certainty the character of the appliance that applicant desires to obtain a license for, together with the number of his individual license as provided in this act, and upon the payment of a license fee as hereinafter provided, the fish commissioner shall issue to such person a license to operate the character of appliance desired in said application.

§ 3351c. How Issued.

All licenses provided in sections two and three of this act shall be issued as follows: Upon application therefor by any person, an annual license shall be issued by the fish commissioner for fixed and other appliances for catching salmon or other food fishes as herein provided, which shall entitle the holder to operate said appliances for the term of one year in the waters of this state, wherein such appliances are not prohibited by law. The following fees for such licenses shall be collected by the fish commissioner and paid over to the state treasurer on or before the tenth of each month, and by him turned into the fish hatchery fund, to wit:

§ 3351d. Fees for Licenses to Locators of Appliances.

For each drag seine not exceeding two hundred and fifty feet in length..	\$2 50
For each drag seine more than two hundred and fifty feet in length, and not exceeding five hundred feet in length.....	5 00
For each drag seine exceeding five hundred feet in length, and not exceed- ing ten hundred feet in length.....	10 00
For each drag seine more than one thousand feet in length, and not ex- ceeding fifteen hundred feet in length.....	15 00
For each drag seine more than fifteen hundred feet in length, and not ex- ceeding two thousand feet in length.....	20 00
For each drag seine more than two thousand feet in length, and not ex- ceeding twenty-five hundred feet in length.....	25 00
For each drag seine more than twenty-five hundred feet in length.....	30 00
For each first class pound net, trap or weir on the Columbia river.....	20 00
For each second class pound net, trap or weir on the Columbia river.....	10 00
For each first class purse seine.....	50 00
For each second class purse seine.....	25 00
For each gill net or drift net.....	2 50
For each set net.....	2 50
For each pound net, trap or weir on Willapa Harbor and Gray's Harbor..	10 00
For each pound net, trap or weir (except on the Columbia river, on Will- apa Harbor or Gray's Harbor).....	50 00
For each scow fish wheel.....	15 00

Stationary fish wheels shall pay \$25 for first class wheels and \$10 for second class wheels; all classifications of wheels, pound nets and purse seines to be determined by the fish commissioner: Provided, Where any trap or pound net is so constructed as to take fish at each end of its main lead it shall obtain and pay for a license especially permitting the taking of fish at both ends, for

which it shall pay a license fee double the amount of a pound net or trap taking fish at one end only. In addition to the foregoing license charges there shall also be paid by the owners of each trap, pound net or fish wheel operated in the waters of the state, the sum of one dollar for each one thousand fish taken by such trap, pound net or fish wheel, and the said additional fee shall be paid on or before the tenth day of each month.

§ 3351e. Report of Catch.

It shall be the duty of every person owning or operating any trap, pound net or fish wheel to furnish to the fish commissioners on or before the tenth day of each month a sworn statement giving the number and location of such trap or pound net and a detailed statement of the actual number of fish caught at such trap or pound net, and in addition to answer such questions as the fish commissioner shall propound with reference thereto, which statement shall be filed with and retained by the fish commissioner.

§ 3351f. License to Others than Canners—Fees—Minimum.

Every person, firm or corporation engaged in the business of buying and selling, packing and preserving or otherwise dealing in salmon other than canners thereof, shall pay as a license the sum of thirty cents per ton gross weight or in the round of said fishes bought and sold, packed or preserved or otherwise dealt in: Provided, No person engaged in the business aforesaid shall pay less than two dollars and fifty cents per annum. It shall be the duty of each person, firm or corporation affected by the provisions of this section to render to the fish commissioner of the state of Washington, on or before the tenth day of each month, on blanks to be furnished by the said fish commissioner, a detailed statement showing gross amount of fresh fish in the round bought and sold, packed and preserved or otherwise dealt in during the preceding month, and each person shall pay to the said commissioner the amount due under the provisions hereof, on or before the tenth day of each month, and a failure or neglect to do so shall constitute a misdemeanor, and upon conviction thereof the offender may be punished as hereinafter provided.

§ 3351g. License to Canners—Fees for.

Every person, firm or corporation engaged in canning salmon shall procure a license before commencing the season's packing, as follows:

For each cannery packing less than 10,000 cases per annum.....	\$100 00
For each cannery packing from 10,000 to 15,000 cases per annum.....	150 00
For each cannery packing from 15,000 to 20,000 cases per annum....	200 00
For each cannery packing from 20,000 to 25,000 cases per annum.....	250 00
For each cannery packing from 25,000 to 30,000 cases per annum....	300 00
For each cannery packing from 30,000 to 40,000 cases per annum....	400 00
For each cannery packing from 40,000 to 50,000 cases per annum.....	500 00
For each cannery packing from 50,000 to 60,000 cases per annum....	600 00
For each cannery packing from 60,000 to 70,000 cases per annum....	700 00
For each cannery packing from 70,000 to 80,000 cases per annum....	800 00
For each cannery packing from 80,000 to 90,000 cases per annum....	900 00
For each cannery packing from 90,000 to 100,000 cases per annum....	1,000 00

§ 3351h. Basis of License Fee.

Rates on all canneries to be based upon pack of each preceding year. New canneries shall pay a license of \$250 until their pack is definitely known.

§ 3351i. Unlawful Fishing—Times—Places.

And it shall be unlawful to take or fish for salmon in any of the tributaries of Puget Sound during the month of April and from the fifteenth of October to the fifteenth of November in each year. It shall also be unlawful to take or fish for salmon at all times and by any means whatsoever in any of the following named rivers or their tributaries, above tide water in said rivers: Nooksack river, Samish river, Skagit river above the town of Hamilton, Stillaguamish river, Snohomish river, White river, Puyallup river, Nisqually river and Skokomish river. And it shall be unlawful to take or fish for salmon in the waters of Gray's Harbor or its tributaries from the fifteenth day of March to the fifteenth day of April and from the fifteenth day of November to the fifteenth day of December in each year. And also it shall hereafter be unlawful to take or fish for salmon in any of the following named tributaries of Gray's Harbor from the fifteenth day of August to the fifteenth day of November in each year above the points hereinafter described, to wit: It shall be unlawful to take or fish for salmon in the Chehalis river above a point one-half mile below the mouth of the Wynooche river; it shall be unlawful to take or fish for salmon above a point one-half mile above the mouth of the Humptulips river; it shall be unlawful to take or fish for salmon above a point one-half mile above the mouth of the Elk river; it shall be unlawful to take or fish for salmon above a point one-half mile above the mouth of the Johns river. The fish commissioner is hereby empowered to indicate the points above which fishing may not be done as provided hereinbefore by driving piles at the points in said streams above designated, which shall mark the points above which said fishing shall not be done. It shall be unlawful to take or fish for salmon in the waters of Willapa Harbor or its tributaries from the fifteenth day of March to the fifteenth day of April, and from the fifteenth day of November to the fifteenth day of December in each year. And also it shall be unlawful to take or fish for salmon in any of the following tributaries of Willapa Harbor above tide water in said rivers: North river, Willapa river and Nasel river. Nothing in this act shall be construed to prevent fishing with hook and line, commonly termed angling, in any of the above named rivers. It shall be unlawful to take or fish for salmon in the Columbia river or its tributaries, or within three miles outside of the mouth of said Columbia river, by any means whatever in any year, between 12 M. the first day of March and 12 M. the fifteenth day of April, or between 12 P. M. the fifteenth day of August and 12 M. the tenth day of September, except Snake river, and it shall be unlawful to take or fish for salmon in said Snake river or any of its tributaries by any means whatever, in any year, between 12 M. the first day of March and 12 M. the fifteenth day of April, or between 12 M. the first day of August and 12 M. the first day of September. And it shall be unlawful to take or fish for any salmon, by any means whatever, except with hook and line, commonly termed angling, in the Kalama river, Wind river. Little White Sal-

mon river, Wenatchee river, Methow river, Little Spokane river and Colville river, and in the Columbia river within one mile of the mouth of the above-named rivers. It shall be unlawful at any time to take any fish with a net, trap or other device than hook and line in Chambers creek, in Pierce county, or within two hundred and fifty yards of the mouth of said creek, and the mouth of said creek shall be construed to mean the junction where the fresh and salt waters meet at low tide.

§ 3351k. Location of Appliances—How Made—Restrictions on.

Any person or corporation, after first having obtained a license as provided for in this act, shall indicate locations for traps or pound nets made under such license, by driving at least three substantial piles thereon, which must extend not less than ten feet above the surface of water at high tide, one of said piles to be driven at each end of the location claimed, and upon said terminal piles there must be posted the license number, and if the locator fails to construct his appliance during the fishing season covered by his license, said location shall be deemed abandoned. After any such trap or pound net has been located, the owner thereof may file a description thereof sufficient for identification with the fish commissioner, and shall thereafter have the exclusive right to fish such location and to sell and transfer such right during such time as the locator or owner of such right shall comply with the requirements of the law pertaining thereto in other respects. Locations for drag seines may be made by driving a substantial stake or erecting a permanent monument at each end of the location claimed and posting thereon the number of the license under which such drag seine is operated: Provided, That no seine location the title to which is in the state shall occupy a greater space than twice the length of the seine covered by above license. Locations for set nets may be made by driving a substantial stake or erecting a permanent monument or securely anchoring a buoy on the location claimed, upon which shall be posted the number of the license under which such set net is operated: Provided, There shall be a lateral passageway of at least three hundred feet and an end passageway of thirty feet between all set nets. No fishing appliance or device of any kind whatsoever located or used upon any streams or rivers of this state shall, either by a lead or any parts of said appliance occupy more than one-third of the width of such streams or rivers.

§ 3354a. Penalties.

Any person or corporation owning, operating, maintaining or using any pound nets, traps, weirs, fish wheels or other fixed appliances, or any seines, set nets, gill nets or drift nets, for the purpose of catching salmon or other food fishes within or upon the waters of this state, without first having obtained a license so to do as provided for in this act, shall be deemed guilty of a misdemeanor, and any assignee of a license operating any such appliance without giving notice of such assignment as required by this act to the fish commissioner, shall be guilty of a misdemeanor.

Nothing in this act shall be so construed as to prevent fishing with set nets in any of the rivers of this state except when such fishing is expressly pro-

hibited by law or prohibited by the fish commissioner in his discretion in rivers on which are located state fish hatcheries.

§ 3354b. Fish Commissioner may Close Fishing—Time—Place—Notice—Penalties.

Whenever the fish commissioner shall consider that the protection of the food fishes mentioned in this act shall require it, he may close to fishing any stream or river in this state emptying into Puget Sound, the Columbia river, Gray's Harbor or Willapa Harbor, in the manner following, to wit: He shall post in the office of the county auditor of the county or counties through which the stream or streams desired to be closed shall run, a notice stating that on a date set up in said notice, which date shall be not less than thirty days from the date of notice, said stream or streams will be closed to public fishing, and shall cause a like notice to be published in some weekly paper published in said county or counties for not less than four successive issues. Any person fishing in said stream or streams after it shall have been closed as hereinabove provided, shall be guilty of a misdemeanor and upon conviction shall be punished as provided for the punishment of misdemeanors in this act; Provided, Nothing in this section contained shall be construed to prohibit hook and line fishing for salmon in any stream or streams in this state.

§ 3355. Fish Hatchery Fund.

All moneys collected for licenses and fines under the provisions of this act shall be turned into the state treasury and placed in the fish hatchery fund.

§ 3357. Definition of Word "Salmon."

Whenever the term salmon is used in this act it shall be construed to include and apply to chinook, steelhead, blueback, silverside, and all other species of salmon.

§ 3358. United States Officers may Take for Propagation Without License.

Nothing in this act shall be construed so as to prevent the taking of salmon or other food fishes by the fish commissioner or proper officers of the United States for propagating purposes.

§ 3359. Reports of Fish Taken.

It shall be the duty of all persons who purchase salmon or food fishes from fishermen or takers or catchers of salmon, or other food fishes, for the purpose of selling or canning them or the product of the same for profit, to report to the fish commissioner on blanks furnished by him, on or before the fifteenth day of November of each year hereafter, the number of each species of fish, stated separately, so purchased by them, or if purchased by weight, the number of pounds of each species, and the average price per pound; such statement or report shall be made under oath.

§ 3360. Commissioner may Administer Oaths.

The fish commissioner is hereby authorized to administer oaths, and may require any statement made to him in application for license, or in any report submitted to him, or in any matter connected with the discharge of his official business, to be made to him under oath.

§ 3361. Definition of Words "Person" and "Persons."

The term "person or persons," when used in this act, shall be taken to include partnerships, associations and corporations. The term "seine" in this act, is intended to cover all forms of nets known as seines, purse seines or purse nets, trawls, beam trawls, stow nets, draw nets, bag nets, drag nets, drift nets, reef nets and dredge nets.

§ 3361a. Reports Treated as Confidential.

All reports showing the status of the business of any person required under the provisions of this act to report to the fish commissioner, shall be treated by said commissioner as confidential and shall not be open to public inspection, nor shall they be published in any way by the commissioner or communicated to any person unless their publication shall be necessary in some civil or criminal proceeding against said person or persons for the purpose of enforcing the provisions of this act: Provided, That the fish commissioner may utilize any and all statistics furnished him in any annual, biennial or other report made by him where the use of said statistics or information will not disclose to the public the condition of business of any person: And provided further, That if the fish commissioner or anyone in his employ shall willfully publish the said information or statistics disclosing the condition of business of any individual in violation of this section, he shall be guilty of a misdemeanor and shall be punished by a fine of any amount not exceeding one thousand dollars.

§ 3361b. Penalties.

Any person violating any of the provisions of this act, whether or not such violation is otherwise specifically declared to be a misdemeanor, either by neglecting to observe the requirements of this act or violating any of the provisions thereof, shall be deemed guilty of a misdemeanor, and shall upon conviction therefor for each and every offense, be subject to a fine of not less than ten dollars nor more than two hundred and fifty dollars.

§ 3361c. Repeal.

All acts and parts of acts in conflict with the provisions of this act are hereby repealed: Provided, That all licenses now existing under the laws heretofore in force shall be continued for the time such licenses may have to run or for the unexpired portion thereof, the same as if this act had not taken effect, and such licenses shall be renewed upon application upon the payment of the license fees as provided by this act.

An emergency exists, and this act shall be in effect immediately. [Act of March 13, 1899; L. 1899, p. 194, as amended by act of March 1, 1901, p. 37, and by act of March 16, 1903; L. 1903, p. 236.]

Laws of 1899, page 194.—Under Laws 1899, page 194, prohibiting fishing with fixed appliances in any river flowing into Puget Sound and within a distance of three miles from the mouth of any such rivers, and authorizing the fish commissioner, for the purpose of enforcing the law, to indicate the mouths of said rivers by driving piles therein, the action of the

fish commissioner in locating the mouth of any river at a given point cannot be reviewed by the court, when brought in question collaterally: *Halleck v. Davis*, 22 Wash. 393, 60 Pac. 116.

Laws 1899, page 194, prohibiting the erection and maintenance of fixed appliances for fishing within three miles of the mouth of any river flowing into Puget

Sound contemplates that the measurement to determine whether the act has been violated should be made over an all-water course, and not in a straight line across the uplands: *Id.*

Location of Appliances.

The defendant located its trap in the vicinity of plaintiff's trap by the following method: 1. It first ascertained the general course its trap would point when driven, and ascertained where a line would intersect the shore if projected along that course from the trap to such shore; 2. It ascertained the general direction of the shore for one-half mile on each side of the point of intersection; 3. It then drew a line parallel with the general direction of the shore, causing such line to intersect the outer edge of the plaintiff's trap; 4. It then measured at a right angle from the last-mentioned line to the nearest point of its trap location, being its inner end or end nearest plaintiff's trap. The end passageway, measured in this manner, was six hundred and twenty feet. Held, that defendant's trap did not encroach upon the plaintiff's location, inasmuch as the method of measurement was correct under the statute: *Point Roberts Fish Co. v. George & Barker Co.*, 28 Wash. 200, 68 Pac. 438.

Laws of 1899, page 194, section 1, which provides that it shall be unlawful for any person to construct, operate, and maintain in any of the waters of the state, "at a greater depth than sixty-five feet at low tide," any pound net or trap for the purpose of catching salmon or other food fishes, was intended by the legislature, in view of all the provisions of the act, to prohibit the construction of such fishing appliances in waters of greater depth at low tide than sixty-five feet: *Cherry Point Fish Co. v. Nelson*, 25 Wash. 558, 66 Pac. 55.

The holder of a fishing license who locates a site for a fish trap or pound net, but is unable to perfect his location in accordance with statutory requirements for a period of six weeks thereafter, though in the meantime using reasonable and diligent effort to comply with the law, is entitled to priority over a subsequent locator who has actual notice of his attempted location, although the subsequent locator more nearly conforms to the requirements of Laws 1899, page 203, section 9, which provides that locations for pound nets or fish traps shall be indicated by driving at least three substantial piles thereon, which must extend not less than ten feet above the water at high tide, one pile being placed at each end of the location, with the claimant's license number posted thereon: *Elwood v. Dickinson*, 26 Wash. 631, 67 Pac. 370.

If the corporation omitted to do the things required by the sixth section of

the act of 1899, the state might call the corporation to account, but until it does so, and declares the rights acquired by other provisions of the statute forfeited, no private individual can profit thereby: *Hastings v. Anacortes Packing Co.*, 29 Wash. 232, 69 Pac. 776.

The owner of one location has no right to extend his pound net in the direction of a contiguous net, so as to shut off the space of six hundred feet prescribed by law for end passageway, even though the combined length of the contiguous nets may be less than two thousand five hundred feet: *Fidalgo I. Canning Co. v. Womer*, 29 Wash. 503, 69 Pac. 1121.

In an action by the owner of pound net No. 29 to enjoin the construction of an extension of pound net No. 2565 so as to shut off the end passageway of six hundred feet between it and net No. 1766, owned by a third party, an allegation that plaintiff is informed and believes that the owner of No. 1766 will construct and operate a trap upon that location during the coming fishing season does not show merely an apprehension of mischief for which an action will not lie, inasmuch as the nuisance complained of is not the probable operation of an unabandoned fishing location, but the unlawful encroachment by the owner of trap No. 2565 upon the end passageway between that net and net No. 1766, which would result in shutting off the run of fish to plaintiff's trap: *Id.*

Held, that the words "outer end of any location theretofore made" refer to the end which is out toward the proposed new location, and that, where the subsequent location is inshore from the prior location, the line paralleling the shore line must be drawn through the inner instead of the outer end of the location theretofore made: *Id.*

Fishing license, violation of—Right of individual.—A private individual cannot profit by the failure of a licensee under the fishing laws of the state to perform the duties enjoined by law, until the state has declared a forfeiture of rights under his license: *Hastings v. Anacortes P. Co.*, 29 Wash. 224, 69 Pac. 776.

License for—Assignment of license.—Where notice is not given to the fish commissioner of an attempted transfer of a fishing license and of the location and appliances in use thereunder, the person attempting to transfer is guilty of a misdemeanor, under Laws 1897, page 215, section 3, and such attempted transfer amounts to an abandonment of the location and can confer no rights upon the assignee: *Gerhart v. Worrell*, 20 Wash. 492, 55 Pac. 625.

License—Not local.—A license to fish granted by the state fish commissioner under Laws 1893, page 15, constitutes a

roving license, and cannot be construed as authority for the maintenance of a trap at any designated point: *Morris v. Graham*, 16 Wash. 343, 58 Am. St. Rep. 33, 47 Pac. 752.

License for—Limitations of.—Laws 1891, page 171, regulating salmon and sturgeon fishing, and Laws 1893, page 15, regulating the catching of salmon and providing for the licensing thereof, are upon the same subject matter and should be construed together so far as possible. The act of 1893 limiting the right to licenses for catching salmon to residents and citizens of the state must be interpreted in the light of the act of 1891 providing that such person be a citizen of the United States, or has declared his intention: *Walker v. Stone*, 17 Wash. 578, 50 Pac. 488.

The legislature has power to license fishing within the waters of the state and give exclusive control for the period of one year. A license to fish is a franchise which entitles the holder to maintain an action for injunction against any infringement of his rights: the fact that any trespass upon one's rights under a franchise constitutes a misdemeanor punishable criminally does not militate against the holder's right to protection in equity: *Id.*

Fisheries—License—Location of.—Under Laws 1897, page 218, section 7, traps and pound nets are recognized as the only fixed appliances for which licenses may be issued for fishing locations in the waters of Puget Sound: *Gerhard v. Worrell*, 20 Wash. 492, 55 Pac. 625.

Laws 1897, page 218, section 7, which provides that, if the holder of a fishing license, who has indicated a location for his trap or pound net by driving piles and posting his license number, "fails to construct his appliance during the fishing season covered by his license, such location shall be deemed abandoned," does not preclude one who has abandoned a fishing site from relocating thereon for the next fishing season, when no other person has acquired a prior claim thereto between the time of his abandonment and his relocation: *Legoe v. Chicago Fishing Co.*, 24 Wash. 175, 64 Pac. 141.

Under Laws 1897, page 218, section 7, the plaintiff, who on the afternoon of March 16th placed temporary poles on the beach while the tide was out and posted his license number thereon, and three days

later drove substantial piles farther out, did not thereby acquire a superior right over defendant, who, on the evening of March 16th, posted its license number on its own piles already on the site, when the defendant had on the morning of that day been engaged at the site in making tests of the course of the tides by means of lines and floats, preparatory to fixing a pound net at that place—the acts of the defendant thus being as effective as those of the plaintiff to indicate an intention to make a fishing location on the site, and the defendant being actually first in time to indicate his intention and also to literally comply with the statute: *Id.*

The act of a locator of a fishing site in posting its license number upon its own piles, driven upon the site in prior years, constitutes a literal compliance with the requirements of the statute: *Id.*

The failure of a locator of a fishing site to construct a trap thereon during the fishing season covered by his license, under Laws 1897, page 214, section 7, does not constitute such an abandonment of the location as to disqualify the licensee for relocating the same for the next fishing season: *De Mers v. Sandy Spit Fish Co.*, 24 Wash. 582, 64 Pac. 799.

Where the location of a fishing trap was invalid by reason of the site being occupied by a prior locator, such invalid location could not ripen into a valid location at the expiration of the prior locator's fishing license under which he fished that site: *White Crest Canning Co. v. Sims*, 30 Wash. 374, 70 Pac. 1003.

Where an attempted location of a fishing site is invalid as against original locators thereon it cannot be valid as against anybody else: *Id.*

In an action to enjoin defendants from operating a fishing trap upon a certain location claimed by plaintiff as a prior locator, a finding that such location had been abandoned was warranted, where it appeared that the site was located in March by plaintiff's assignors by driving piles and posting thereon the number of the locator's license; that nothing more was done by the locators thereon, nor their license even recorded; that in the latter part of September of the same year, defendants located the same site and at that time found no posts or piles on the site to indicate that it was held by other locators: *Id.*

§ 3375. Legal Period for Gathering Oysters.

It shall be unlawful to gather oysters or to remove them from any natural oyster bed or natural oyster bed reserve in any of the rivers, bays or waters of the state of Washington, at any time from the fifteenth day of June to the fifteenth day of March following and inclusive, of each year, except under the supervision of the fish commissioner of the state of Washington or of the

United States, for purposes of propagation, experimental or other scientific purposes: Provided, That nothing in this section shall be construed to interfere with the provisions of section 3362 of Ballinger's Annotated Codes and Statutes of Washington, being section 1198 of the code of 1881. [Amendment, approved Mar. 13, 1899; L. 1899, p. 270.]

§ 3377. Propagation of Eastern Oysters.

The fish commissioner shall establish experiment stations in the waters of Willapa Harbor and Puget Sound, and procure eastern oyster plants for the purpose of testing the feasibility of propagating eastern oysters in the waters of this state.

The fish commissioner is hereby authorized to employ suitable help for the prosecution of this work.

The sum of seventy-five hundred dollars (\$7,500.00), or as much thereof as may be necessary, is hereby appropriated out of any money in the state treasury not otherwise appropriated for the purpose of carrying out the provisions of this act, and the state auditor is hereby authorized to audit the bills of the fish commissioner and if found correct to issue his warrant for the same and the state treasurer is hereby authorized to pay the same. [Approved Mar. 7, 1899; L. 1899, p. 51.]

§ 3377a. Creating State Oyster Commission.

There is hereby created a state oyster commission to consist of the governor, commissioner of public lands and the fish commissioner.

Secretary of.

The commissioner of public lands shall be the secretary of said commission, which secretary shall keep a true, full and correct record of all meetings of said commission. Said records shall be kept in the office of the commissioner of public lands and shall be public records open for inspection of the public during office hours.

Meetings.

The said commission shall regularly meet on the first Tuesday in January, April and October, of each year, at the office of said commission, and at such other times as the chairman of said commission may call and direct.

Quorum.

A majority of said commission shall constitute a quorum to do business on all questions arising or coming before said commission. A decision of a majority of the members of said commission shall be valid as the act, ruling, judgment or decision of said commission.

Duties and Powers.

It shall be the duty of the state oyster commission, and they shall have power to:

1. Examine all existing oyster reserves and to do or cause to be done such things as may be deemed advisable, to conserve, protect and develop said reserves as now established and that may be hereafter established and to make such rules and regulations as may be found necessary or desirable to carry into effect the provisions of this act.

2. To immediately examine all tide or oyster lands belonging to the state (except tide lands of the first class and lands hereinabove provided for) and to survey, plat and establish thereon what shall be and constitute oyster reserves for the future.

3. To cause a survey or resurvey of all the state oyster land reserves now existing or to be established by the said commission, to be made before the first day of October, 1903, or as soon thereafter as possible, and shall have each angle of the boundary line indicated by a stone of not less than one hundred pounds in weight and marked with the letters S. R. cut thereon in letters not less than three inches long and one-half inch deep, and to cause all oyster reserves to be platted, said plats to be filed in the office of the commissioner of public lands and in the office of the auditor of the county wherein said reserves are located; and in cases where the adjoining lands are used in whole or in part by private individuals for the production of oysters, stakes shall be kept standing on all of the angles of the boundary, the tops of which shall be at least four feet above high tide.

4. Said commission may, when it seems to them advisable, close any portion of any of the reserves against the removal of oysters for any period of time, not longer than two years at one time: Provided, That such closed periods may be thereafter renewed, from time to time, not exceeding in all four years, by the commission.

5. To care for and protect all reserves and to reseed and replant such as are in need of seed.

6. To employ such patrolmen and deputies as may be necessary for the protection of oyster reserves and collect licenses and payment for seed oysters and to define their duties.

Reserves to be Established, Surveyed and Platted.

The tide land within all oyster reserves established and surveyed and platted by said state oyster commission shall be forever reserved from sale or lease.

Licenses—Conditions of.

Any person, persons, or corporation may secure a license from the state oyster commission to take from the oyster land reserves oysters to be used for seed purposes only, and upon the terms and conditions hereinafter provided for.

No license shall be granted to take seed from any oyster land reserve except between the first day of April and the fifteenth day of June of each year, and at no time before five o'clock in the morning, or after eight o'clock in the evening; and no person, persons or corporation shall take from the state oyster land reserves an amount of oysters to exceed five hundred sacks to each acre

prepared for seeding, and all seed taken from the state's oyster land reserves under the provisions of this act must be used upon lands situated in the state of Washington and described in the application for license. Any person, company or corporation desiring to take oysters from the state's oyster land reserves for the purpose of seeding his, her or their oyster beds, may make application to the state oyster commission for a license so to do, said application to be made upon forms to be provided by said state oyster commission in substance as follows: It shall show the date when made; the name of the person, company or corporation making the same; a description of the land upon which the oysters are to be placed, said description of land to show county, township, name of bay or inlet where land is located; state the amount of land prepared for seeding, and how prepared; whether the same is diked or not; whether it is hard ground or mud, and if mud ground, whether any crust or shell, sand or other substance, has been formed to protect the seed oysters. The applicant must state in application the number of sacks of oysters desired to be taken under the license, which amount must not exceed five hundred sacks per acre for all ground properly prepared to receive them. Where the applicant desires the license to be made in the name of any other person than himself or themselves or his or their agent, he shall so state. And no person, firm or corporation shall take oysters from any of the reserves in this state, without first having procured a license so to do. The applicant must agree to pay to the state oyster commission, under such rules as they may prescribe, the sum of twenty-five cents per sack on Puget Sound and ten cents per sack in all other places for all oysters taken under the license and in all other things to comply with the rules and regulations governing the taking of oysters from the oyster land reserves as set forth in the license; and that all oysters taken in pursuance of the license shall be put on the ground described in the application. Every applicant shall declare upon oath or affirmation that the application is made in good faith, and that all things stated therein are true.

When application is made to the state oyster commission for permission to take oysters from the state oyster land reserves, and such application is made according to the provisions of this act, the said commission shall grant such applicant a license to go upon any of the state's oyster land reserves that are not closed to operation, and take therefrom oysters for the use set forth in the application and for no other. Said license shall contain the privileges and prohibitions provided for in this act, and such rules and regulations as may have been adopted by the commission for the regulation of the business of taking oysters from the oyster land reserves.

Definition of "Sack."

Whenever the word sack is used in this act it shall be considered to mean a quantity equal in weight to one hundred and twenty pounds.

License Fee.

Every person applying for a license under the provisions of this act shall pay to the state oyster commission five dollars before the license shall be issued.

Oyster Fund Created.

There hereby is created a fund to be known as the oyster fund, and all moneys received from the disposal of seed oysters on the reserves or any part thereof or any of the products thereof, or for license to operate thereon and appropriation herein made shall go into this fund, and all expense incurred on account of the state oyster land reserves shall be paid from this fund, by warrants drawn upon the funds in the same manner as is pursued in other state funds.

Penalties.

If any person or persons shall take oysters from any of the state oyster land reserves contrary to the provisions of this act, or shall go upon said reserves and rake up, or otherwise prepare oysters to facilitate the taking of same, shall be guilty of a misdemeanor and upon conviction thereof shall be fined in a sum not less than one hundred dollars, and imprisonment for a term of not more than one year, and forfeit any license he or she may then hold.

Appropriation for.

For the purpose of carrying out the provisions of this act, the sum of five thousand dollars, or so much thereof as may be necessary, is hereby appropriated from the general fund of the state into the oyster fund: Provided, however, That within two years from the date of the passage of this act, the amount hereby appropriated shall be reimbursed by the oyster fund to the general fund and thereafter fifty per cent of the amount received for licenses and receipts for seed shall be paid into the state general fund.

An emergency exists and this act shall take effect immediately. [Approved, Mar. 16, 1903; L. 1903, p. 340.]

§ 3378. Bounties for Taking Seals and Sea Lions.

There shall be paid a bounty in the sum of one dollar for the killing of each common seal (*phoca vitulina*) and the sum of two dollars and fifty cents for the killing of each sea lion, when killed within the waters of the state of Washington, or within the waters of the Pacific ocean within one marine league of the Washington shore: Provided, however, That no more than twenty-five hundred dollars shall be paid in any year as a bounty under the provisions of this act.

Any person killing or causing to be killed within the waters of the state of Washington, or within the Pacific ocean within one marine league of the Washington shore, any common seal (*phoca vitulina*), or any sea lion, shall scalp or cause to be scalped said seal or sea lion and shall take the scalp to the fish commissioner of the state of Washington, or any deputy, and shall make an affidavit that the animal from which the scalp was taken, was killed within

the state of Washington, or in the Pacific ocean within one marine league of the Washington shore, together with date of killing, which said affidavit shall be in the following form:

State of Washington, }
County of..... } ss.

I, (A. B.), being first duly sworn, on oath depose and say, that I killed (in case the party making the affidavit did not kill, then he must include herein that he saw killed, and here insert the kind killed and the place and the time when killed), said animals within the state of Washington, or (if in the waters of the Pacific ocean), within one marine league of the Washington shore, and that the scalp or scalps, which are here presented, are the identical scalps taken from said animals and which animals were killed within the year 190...

Signed,

Subscribed and sworn to before me this ... day of, 190...

.....
Fish Commissioner of the State of Washington.

That thereupon said fish commissioner, or his deputy, shall immediately investigate the truth of said affidavit and all allegations therein, and shall be authorized to demand additional evidence, and the fish commissioner and any deputy appointed by him, is hereby authorized to administer oaths and take the affidavit hereinbefore provided.

The party killing said animals and presenting said affidavit mentioned in section two of this act shall be required to deliver all scalps to the fish commissioner, or the deputy taking the affidavit. Thereupon the fish commissioner, upon being satisfied the party making the affidavit actually killed or caused to be killed the number of animals named in his affidavit, and the scalps presented are in number identical with the number and kind stated in the affidavit, and all delivered to the fish commissioner, shall issue a certificate in duplicate which shall be in the following form:

State of Washington, }
County of..... } ss.

This is to certify, that has satisfactorily proved to me that he killed within the waters of the state of Washington, and is entitled to receive from the State Treasurer the sum of therefor.

.....
Fish Commissioner of the State of Washington.

Provided, That in case the affidavit and scalps herein provided are presented to a deputy fish commissioner, the deputy shall investigate the statements contained in said affidavit, and he shall forward the said affidavit, together with his report in writing thereon, to the fish commissioner, and the fish commissioner shall thereupon investigate the same and if satisfied of the truth of said affidavit, shall issue the certificate hereinbefore mentioned, but the deputy fish commissioner shall not destroy the scalps delivered to him until the fish commissioner issues the certificate. No deputy shall be permitted to issue any certificate hereunder. Each certificate and duplicate shall be correctly and consecutively numbered, the original shall be delivered to the party making the affidavit, and the duplicate shall be numbered the same as the original and shall be immediately forwarded to the state auditor to be filed in his office. The party receiving such (such) certificate, or his assigns or order, upon presentation of such certificate to the state auditor shall be entitled to be paid the amount thereof and the state auditor upon said certificate being presented to him shall compare the same with the duplicate thereof and if found in all respects correct shall issue a warrant for the amount thereof. The fish commissioner shall immediately after issuing the certificate hereinbefore mentioned, destroy all scalps presented, but shall preserve and keep of record all affidavits, and shall keep correct record of the number and amount of each certificate issued, in a book provided for that purpose, and when the total amount of certificates issued shall equal twenty-five hundred dollars (\$2,500) in any one year, no more certificates shall be issued for that year, and no further bounty paid for that year.

A scalp, referred to in this act, shall consist of both ears, of the seal or sea lion, connected by a strip of skin that grew between them, at least two inches wide, intact.

For the purpose of paying the bounties provided in this act, there is hereby appropriated the sum of five thousand dollars for the period of two years from this date, that is to say: twenty-five hundred dollars for the payment of the bounties for the year 1903 and twenty-five hundred dollars for the payment of bounties for the year 1904 out of any moneys in the fish hatchery fund in the state treasury not otherwise appropriated. [Approved Mar. 16, 1903; L. 1903, p. 145.]

§ 3381. Of Agriculture—State Fair—Object and Purpose of.

That it is the object and purpose of this institution to promote and further the advancement of all agricultural, stock raising, horticultural, mining, mechanical and industrial pursuits in this state, and for the carrying out of this object, the management shall provide for an annual fair or exhibition by the institution upon the fair grounds owned by this state near the city of North Yakima, of all the industrial products of this state; said annual fair to be held upon such dates as may be fixed by the state fair commission, not earlier than the

3d Monday of September nor later than the 2d Monday of October of each year, and which fair shall continue for at least six days. [Amendment, approved Mar. 7, 1903; L. 1903, p. 66.]

§ 3387. Time and Place of Meetings.

The regular and called meetings of the state fair commission shall be held at the office of the secretary in the city of North Yakima, and the regular annual meeting shall be held thereat on the first Monday in April of each year, at which meeting the president shall be elected by the commissioners from their own number and a secretary and treasurer shall also be elected either from the membership of the board or otherwise as the board may deem proper; and such other business shall be transacted as the interests of the state fair shall require. On the last Monday of October of each year the state fair commission shall prepare and transmit to the governor of the state a full financial statement, signed by the president and treasurer and attested by the secretary, of all funds received and disbursed, and also a report signed by the president and secretary of all the assets and liabilities of the state fair, a full and detailed account of all its transactions, statistics and information gained, and for this purpose the commission shall cause the secretary to constantly collect all kinds of information calculated to instruct the agricultural and industrial classes, and have the same embodied in such report. The secretary shall receive a salary of \$1,200.00 per annum, to be paid monthly out of any funds appropriated for the maintenance of the state fair.

All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

An emergency exists and this act shall take effect immediately. [Amendment, approved Mar. 7, 1903; L. 1903, p. 67.]

§ 3391. Agricultural Associations and Fairs.

That any agricultural fair association which has a corporate existence for the purpose and object of holding a fair and agricultural exhibition of stock, cereals and agricultural produce of all kinds, including dairy produce as well as arts and manufactures in any county, may apply to the board of county commissioners of such county for a grant to pay expenses and premiums awarded.

Tax Levy for.

To enable the said board of county commissioners to give said grant, they may, in their discretion, at the time of making the regular annual tax levy, levy a tax not to exceed one-half of one mill on the dollar of all the taxable property in the county, which shall be collected as other taxes: Provided, That in counties of the third and fourth classes such tax shall not exceed one-fourth

of one mill on the dollar and in counties of the first and second classes such tax shall not exceed one-eighth of one mill on the dollar of all the taxable property in such counties: And provided, further, That the board of county commissioners shall be ex officio members of the county agricultural fair association in all counties where tax levies are made under the provisions of this act.

Disbursement of Tax.

The said board of county commissioners shall, not later than July 31st, annually, cause to be paid to the said county fair directors or their duly authorized secretary and treasurer, the amount of the tax collected: Provided, however, That no more than one county agricultural fair shall be held in each county in any one year; and said county fair association so applying for the benefit of the aforesaid grant, must have had a corporate existence and must have held at least two successive annual fairs and exhibitions immediately preceding the application for the grant, and must own buildings and other necessary improvements for said annual exhibition to the value of four thousand dollars. [Approved Mar. 17, 1903; L. 1903, p. 363.]

Continued: Chap. 112, Laws '07.
§ 3402a. **Of Domestic Animals—Protection of Sheep.**

County Inspector—Term of Office—Removal.

The county commissioners of each county in this state may, immediately upon this act going into effect, appoint a qualified person as sheep inspector for and within the boundaries of their counties, who shall hold office until noon on the second Monday in January, 1903, and until his successor is appointed and has qualified as herein provided; any vacancies by resignation, or otherwise, in said office shall be immediately filled by said county commissioners: Provided, however, That the county commissioners of any county may at any time remove said sheep inspector from office, and declare the said office vacant, without a hearing or without assigning any cause therefor, for such reasons alone as may cause them to deem it expedient to act in the premises.

§ 3403. **Election of.**

At the regular meeting of the board of county commissioners next prior to the second Monday in January, 1903, said county commissioners may elect a sheep inspector, whose term of office shall begin at noon on the second Monday in January, 1903, and continue for a period of two years, unless sooner removed as hereinbefore provided, and until his successor is elected and has qualified, and said county commissioners shall elect a sheep inspector each two years thereafter at such meeting, who shall from time to time hold office upon the conditions above and herein provided.

§ 3404. Oath and Bond.

The sheep inspector before entering upon the discharge of the duties of his office shall take an oath of office, and enter into a bond with two or more sureties to be approved by the county commissioners, in the penal sum of two thousand dollars, conditioned for the faithful performance of his duties as such sheep inspector.

§ 3405. Powers and Duties.

Such inspector shall have the power to appoint not more than two deputies, for whose acts he shall in all cases be responsible, and by whom he may perform any act or duty required of him by law. Each inspector shall be provided with a seal of office, which shall be inscribed in substance as follows: "Sheep inspector of county, Washington," and each official certificate, notice or report of such inspector shall be authenticated by such seal.

Whenever it is shown to the sheep inspector of any county that scab or scabies, or any contagious or infectious disease is epidemic in certain localities in any county of this state or other state, territory, province or country, the said inspector must thereupon designate such locality or localities, and prohibit the importation from such locality or localities of any sheep into his county, except under such restrictions as are provided for in this act. This action upon the part of the said inspector shall be known as and shall be deemed to be a quarantine against such locality or localities, and the sheep inspector shall file a notice of such quarantine attested under the seal of his office with the county auditor of his county, who shall provide and keep a book, which shall be properly indexed and open to the public during the office hours of said office, in which said notice shall be transcribed, said book to be designated as the "sheep quarantine register" of said county, and a copy of said notice shall be posted at the front door of the courthouse of said county by the said inspector at the time the same is filed with the said auditor, and this shall be deemed to be full notice to all parties concerned of the existence of the sheep quarantine, and it shall be the duty of the inspector to raise the said quarantine when he discovers that the cause for its existence has ceased, and it shall be his duty from time to time to ascertain the condition in the quarantined locality or localities so as to raise said quarantine when he discovers that the cause for its existence has ceased; and upon said quarantine being raised, said inspector shall give notice of its rescission with the county auditor of his county, and post a copy of said notice at the front door of the courthouse of said county, and said auditor shall transcribe said notice of rescission in the same book and in the same manner as he has transcribed the notice of the quarantine.

§ 3406. Quarantine—Duty of Owner.

Upon notice that a quarantine has been placed on record as hereinbefore provided for against any locality or localities, the owner or person in charge

of any sheep, which are intended to be brought into the said county from localities quarantined against, as provided in the next preceding section, must forthwith notify the sheep inspector of said county of such intention, and such owner or person in charge shall not allow any sheep from said locality so quarantined against to be brought into the said county doing the quarantining until such sheep have been quarantined and inspected by the sheep inspector as provided in the next succeeding section: Provided, That this section shall not apply to sheep being transported upon any railroad or steamer lines through the state of Washington to points beyond the limits of said state, and which are not allowed to graze upon the public range of said state while being so transported.

§ 3407. Regulations for Quarantined District.

Upon receiving notice of the intention of the owner or person in charge of any sheep as provided in the last preceding section to bring such sheep into any county of this state from any quarantined district, the sheep inspector of such county shall forthwith proceed to examine and inspect such sheep before they are brought into the state, and shall cause such sheep to be kept within certain limits designated by him for a period of sixty days, and shall cause the owner or person in charge of such sheep to dip them or otherwise treat them for the disease prevalent in the quarantined district; if at the expiration of said sixty days the said sheep inspector shall find the said sheep are free from scab or scabies and all contagious and infectious diseases, he shall issue a certificate to the owner or person in charge of such sheep permitting them to be brought into this state. When the county doing the quarantining is not one of the border counties of this state, and sheep from the quarantined localities have been permitted to be brought into the state by the inspector of the county or counties between said quarantining county and the border of the locality quarantined against, no certificate of the intermediary counties shall be final or binding upon the inspector of the county doing the quarantining, and such certificate shall not permit the owner or person having control of such sheep to bring them into the county quarantining upon such certificate, but in such a case the owner or person in charge of such sheep shall notify the sheep inspector of the county doing the quarantining of his intention to bring said sheep into said county, and hold said sheep on the boundary of said county until the sheep inspector of said county shall reach such sheep, which he shall do as speedily as possible; the said sheep inspector shall then cause such sheep to be kept within certain limits designated by him for a period of sixty days, and shall cause the owner or person in charge of such sheep to dip such sheep or otherwise treat them for the disease prevalent in the quarantined district; if at the expiration of said time the said sheep inspector shall find that such sheep are free from scab or scabies and all contagious and infectious diseases, he shall issue a certificate to the owner or person in charge of such sheep permit-

ting them to be brought into his county. Provided, however, That if said sheep have been quarantined as provided by this act in any other county in this state after coming into this state, said sheep not having been taken out of the state in the meantime, then the sheep inspector of the county into which the said sheep are to be brought, after satisfying himself that said sheep have been duly and properly quarantined as provided for in this act in such other county or counties, and are in a healthy condition, shall indorse this fact upon the certificate already possessed by the owner or person in charge of said sheep, which shall be deemed to be a certificate from the quarantining county, and shall be sufficient to permit said sheep to be brought lawfully into said county, and to travel therein until revoked, or until such sheep become diseased.

§ 3408. Sheep from Other State or Territory.

Any person who is about to bring sheep into this state from any other state, territory, province or country, must before he brings said sheep into this state, notify the sheep inspector of the county in which he intends to first bring said sheep of the fact that he is about to bring said sheep into said county, the section from whence he intends to bring said sheep, and the time, as near as he can tell, when said sheep will arrive in said county; it shall then become the duty of said sheep inspector to be on hand at the time of the arrival of said sheep, and inspect the same, and cause the same to be confined within certain limits to be designated by him the said sheep inspector. The said inspector shall also cause the said sheep to be dipped within ten days after the arrival of the said sheep in said county. The said sheep shall be kept within the boundaries prescribed, or which may be prescribed from time to time, by the said sheep inspector, for the period of thirty days after they are dipped, when the inspector shall again inspect the sheep, when he may, in his discretion, if he finds said sheep are diseased, or has any reasonable doubts as to the said sheep being in good condition, cause the same to be again dipped and treated, and if he deems the same necessary to prevent the scattering of any contagious or infectious disease, he shall require the said sheep to be confined within certain limits for an additional period of thirty days.

§ 3409. Condition—How Proven.

No person shall move or cause to be moved any sheep from any county to another in this state unless said sheep are sound and healthy and free from scab or scabies, and all infectious and contagious diseases, which condition shall be solely evidenced by a certificate of the inspector, or his deputy, of the county from which said sheep are to be moved, obtained within ninety days immediately preceding such removal.

§ 3410. Inspection on Request.

It shall be the duty of any sheep inspector, upon the request of any person, to visit and inspect any band of sheep within his county (or within five miles

of the line of the state in another state or territory) and if at the time of such inspection such sheep are healthy and free from scab or scabies, and all infectious and contagious diseases, said inspector shall cause the owner, or person in charge of such sheep, a certificate to that effect. And if he find said sheep not healthy and infected with scabs and scabies, or other contagious or infectious diseases, he shall revoke any certificate which may have been issued by him showing such sheep to be in good condition, and such certificate so revoked shall thereafter be null and void, and shall be no protection whatever thereafter to the person holding the same, and such person, on demand, shall deliver the same to such inspector forthwith.

§ 3411. Introduction of Infected Sheep, Unlawful.

It shall be unlawful hereafter for any person, company or corporation to bring into this state any sheep infected with the scab or scabies, or any other infectious or contagious disease, and it shall also be unlawful for any person to bring into this state any sheep which have not been free from all evidence of scab or scabies or any contagious or infectious diseases for at least three months prior to the time said sheep are brought into the state.

§ 3412. Duties of Owners of Infected Sheep.

Any person owning or having charge of any sheep infected with scab or scabies or any infectious or contagious disease, shall keep the same and all sheep with which such sheep have been in contact, and the band or herd in which said sheep have been kept, secure from contact with other sheep, and shall not drive or permit the same to go upon any public road or highway, or any inclosed or uninclosed land, not owned or leased by such person: Provided, That such sheep may be moved or driven upon public roads or highways by first obtaining the written permission of the sheep inspector of the county wherein such sheep may be, which permission shall state the time within which such sheep are to be moved, the place to and from which they are to be moved, and the route to be traveled: Provided, That nothing contained herein shall be construed as giving any inspector any authority to grant any person any right to herd such sheep, or the band or herd with which such sheep have been kept, upon any public road or highway or any traveled trail or road.

§ 3413. Annual Inspection.

It shall be the duty of each sheep inspector to visit and inspect every band of sheep within his county during the months of April or May each year, and at such other times when he is informed in writing, or has reason to believe, that any sheep within his county are infected with scab or scabies, or any infectious or contagious disease, he shall immediately visit such sheep and inspect the same, and upon request of sheep owners representing at least fifty thousand

head of sheep he shall also inspect all the sheep in his county also between the 25th day of August and the 25th day of September of any year when so requested.

§ 3414. Quarantine Limits—Disinfection by Owner.

Whenever upon inspection of any band or herd of sheep or of any sheep in any county of the state of Washington, the sheep inspector of such county shall find any of said sheep affected with scab or scabies, or other infectious or contagious disease, he shall forthwith notify the owner, or person in charge of such sheep, in writing, to put such diseased sheep and the herd or band in which they have been kept into an inclosure, or if such sheep are on the range, to put and keep such diseased sheep and the herd or band in which they have been kept, within certain limits which shall be designated and defined in such notice by reference to natural or artificial objects, and which shall be known and designated in this act as the "sheep quarantine limits," and the inspector shall require the owner or person in charge of such sheep to proceed immediately to treat such sheep and the band or herd in which they have been kept, for the cure of such disease, by some means approved by the inspector, provided that when a dip is used the dip hereinafter provided for shall be used, and any person who shall neglect for three days after the service of such notice to put such sheep into an inclosure, or within the limits designated by such inspector, or shall refuse or neglect to proceed to treat such sheep for the cure of such disease by a remedy approved by the inspector and herein provided, within three days after the time fixed by the inspector, which must be reasonable and give ample time to said party to prepare to dip and treat said sheep, shall be deemed guilty of a misdemeanor, and for each day of such neglect or refusal to comply with the order of said inspector after three days from the date of said notice, such person shall be deemed guilty of a separate misdemeanor, and in addition to the punishment provided for in this act, the inspector shall take charge of such sheep and place them within a proper inclosure or within proper limits and keep them there, and cause them to be treated as directed, and the expense of such seizure, keeping and treatment, together with the fees of the inspector, shall be a charge on the sheep so seized, and shall be a lien thereon prior to any other lien upon said sheep.

§ 3415. Authority of Inspector to Corral and Examine.

The sheep inspector shall have the authority to corral any sheep which he may desire to examine and the person having charge of such sheep shall, when so requested, assist the said inspector in catching and examining said sheep.

§ 3415a. Penalties for Refusing Assistance and Breach of Quarantine.

Any person being the owner, or in charge thereof, or assisting to care for, any sheep, who shall refuse to assist said inspector, when requested as herein-

before provided, and any person who shall secrete any diseased sheep to prevent the inspector from examining the same, or who shall prevent the inspector from examining any sheep, or in any way interfere with such inspector discharging the duties of his office, shall be deemed guilty of a misdemeanor. Any person who shall drive any sheep or cause any sheep to be driven upon or within the limits set apart for any quarantined sheep by a sheep inspector while the same are being occupied by such quarantined sheep, and any person who shall drive any sheep or cause any sheep within such quarantine limits to be driven out of the said quarantine limits shall be deemed guilty of a misdemeanor: Provided, however, That the sheep inspector shall not quarantine any sheep within three miles of any shearing corral, except corrals owned by the owners of said sheep, or leased by him.

§ 3415b. Change of Quarantine Limits.

The sheep inspector shall have the authority upon written application of the owner or person in charge of any quarantined sheep to change the quarantine limits of such sheep for the purpose of procuring sufficient feed for such sheep, and to re-establish new quarantine limits, and this may be done from time to time in the discretion of the inspector.

§ 3415c. Bridges and Ferry—Duties of.

No owner of any toll bridge or ferry-boat, or person in charge thereof, shall permit any sheep to cross any bridge or go upon any ferry-boat in charge of such person or persons unless the person in charge of such sheep shall first exhibit to the person in charge of such bridge or boat a valid certificate issued by an inspector appointed under this act to the effect that such sheep are free from scab or scabies or any contagious or infectious disease.

§ 3415d. Certificate of Health Valid One Year Only.

Every certificate issued under this act to the owner of sheep continuously kept within this state shall be null and void after one year from the date thereof, and every certificate issued to the owner of any band or herd of sheep which are not continuously kept within this state during the year which such certificate was issued shall expire upon such sheep being driven out of the state at any time after said certificate has been issued.

§ 3415e. Compensation of Inspector.

Every sheep inspector and deputy inspector shall be paid five dollars per day for each day when necessarily engaged in the duties of his office and five cents per mile for each mile necessarily traveled by him for such purpose, and his bills for such purposes shall be audited and paid by the county commissioners of the county from which he was appointed.

§ 3415f. Driving on Highways and Public Ranges Without Certificate.

No person shall drive any sheep or cause any sheep to be driven upon the public roads, upon the public ranges, or traveled trails or roads within this state except as herein provided, unless he has a valid certificate showing that said sheep are free from scab or scabies or infectious or contagious disease.

§ 3415g. Damages for Negligent Driving—Lien for on Sheep.

Nothing in this act shall be construed as exempting any person owning sheep from liability in a civil action for damages for negligently or carelessly spreading scab, or scabies, or any other contagious or infectious diseases, but any person so spreading or causing said disease to be spread, either personally or through his agents in charge of sheep belonging to him, shall be liable in a civil action for damages sustained by any other person for injury to such other person's sheep by the infecting of such sheep with the scab or scabies or any other contagious or infectious disease, the same as if this act had not been passed, and no certificate issued under the provisions of this act shall be any defense or excuse in an action for damages of this character. Any damages that may be recovered in such a civil action for damages shall be a lien upon the sheep infected as stated herein by any other band or herd of sheep, for which infection such suit may have been brought, and the court in rendering judgment in any action brought for such damages shall declare such judgment to be a lien upon such sheep and direct them to be sold under special execution to pay such judgment.

§ 3415h. Foreclosure of Lien—Receivers—Attorneys Fees.

The liens herein provided for shall be foreclosed by an action brought in the superior court for the county wherein the lien originated in the name of the said county by the prosecuting attorney for said county as chattel mortgages are foreclosed by a suit in superior court, and upon commencing such an action in said court the prosecuting attorney shall immediately move for the appointment of a receiver to take charge of said sheep and keep the same pending the action, and it shall be the duty of the court to appoint such receiver without notice, and all the expense thereof and all the costs that are taxed in civil actions between individuals shall be taxed up in favor of the county in such a proceeding, and an attorney's fee of fifty dollars shall be taxed in such a proceeding in addition to the attorney's fee allowed by law in a civil action, and all the said costs and attorney's fees shall be paid into the county treasury and shall be credited to the same fund to which the fees collected by county officers are credited: Provided, That the sheep inspector may employ an attorney to assist the prosecuting attorney in such case, when said attorney's fees will go to such attorney so employed.

§ 3415i. Fraudulent Conduct of Inspectors—Penalty.

The sheep inspector and his deputies shall in case that they or either of them or any of them, shall act fraudulently in administering this law, or enter into collusion with any person to evade it or to avoid the consequences of its violation, shall be deemed guilty of a misdemeanor and punished as hereinafter provided.

§ 3415k. Brought from Other County Without Certificate—Disposition of.

Sheep brought into any county in this state, or moved through the said county without a proper certificate, shall be returned under the direction of the sheep inspector to the place from which they were so illegally moved, should the same be in the county where they are found, and if such place should be without the county they shall be moved to the border of the county where they are so found, and they shall there be held by the sheep inspector until the charges for driving said sheep or conveying said sheep to said point have been paid, including five dollars per day for the inspector or his deputy while engaged in such work, and such expenses shall be a lien against said sheep, and shall be enforced as other liens herein provided for are enforced: Provided, That said sheep shall only remain in the hands of the inspector until the appointment of a receiver by the court to take charge of the same, and it shall be the inspector's duty to see that this is done speedily.

§ 3415l. Quarantine Limits—Location of.

In establishing the quarantine limits herein provided for the same shall be established only upon the range or land leased or owned by the owner of the sheep or the person in charge thereof, except where the same can be established on public lands of the United States, not the customary range of another, or lands obtained from private parties by their consent, either by the sheep inspector or the owner of said sheep, or the person in charge thereof, and in case it shall become necessary for said sheep to be driven or transported to a place where the same may be quarantined without infringing the rights of others, the sheep inspector shall carefully provide the route to be taken by said sheep and supervise the movement thereof, and see to it that said sheep shall not come into contact with other sheep or near enough to affect them with the scab or scabies or any other contagious or infectious disease.

§ 3415m. Owners and Custodians to Report Infection.

It is hereby made the duty of every sheep owner and of every person having charge of sheep or herding or working with sheep in any capacity to report to the sheep inspector of the county where such sheep are located, the existence of scab or scabies, or any other contagious or infectious disease among said

sheep as soon as possible after such person has knowledge of the existence thereof, and any such person who fails to give such information to such sheep inspector, or who knowingly or willfully conceals the existence of such disease or diseases amongst the sheep owned by him, or in his charge, or being herded by him or with which he is working in any capacity, shall be guilty of a misdemeanor and punished as hereinafter provided.

In the event of any part of this act being declared invalid or unconstitutional by any court, the remainder of the act shall be and remain in full force and effect.

§ 3415n. Definitions of Terms.

The word person as used in this act shall include corporations, firms, associations and companies, as well as individuals, and the word "sheep inspector," or inspectors wherever used herein shall be deemed to be and used as "sheep inspector" as established in this act, and the words "deputy" or "deputies," shall be deemed to follow the word "inspector" wherever used in this act.

§ 3415o. Penalties.

Any person who shall violate this act, or any part thereof shall be deemed to be guilty of a misdemeanor and on conviction thereof shall be fined not less than two hundred and fifty dollars nor more than five hundred dollars, or be punished by confinement in the county jail for not less than thirty days, nor more than six months, and for the commission of the acts herein which are specifically declared in various parts of this [act] to be misdemeanors, aside from the general provisions contained in this section, the person guilty thereof shall be punishable by a fine of not less than fifty dollars nor more than five hundred dollars, or by confinement in the county jail for not less than ten days nor more than six months.

§ 3415p. Repeal.

The act of the legislative assembly of the territory of Washington, approved February 2, 1888, entitled, "An act in relation to and to prevent the introduction or spread of disease among sheep," and the act of the legislature of the state of Washington, approved February 26, 1897, and entitled "An act in relation to, and to prevent the introduction, or spread of disease among sheep and repealing an act in relation to and to prevent the introduction or spread of disease among sheep, approved February 2, 1888, and declaring an emergency," are each hereby repealed, and all other acts and parts of acts in conflict with this act are hereby repealed.

An emergency exists and this act shall take effect immediately. [Approved Mar. 16, 1901; L. 1901, p. 137.]

§ 3418. Care of Swine.

If any swine shall be found running at large contrary to the provisions of this act, it shall be lawful for any person to restrain the same forthwith, and shall immediately give the owner notice in writing that he has restrained said swine, and the amount of damages he claims in the premises, and requiring the owner to take said swine away and pay such damages. If said owner fails to comply with the provisions of this section within three days after receiving such notice, such damages may be recovered in a civil action before any justice of the peace, and such person who sustains damages as aforesaid shall have a lien upon said swine for the damages sustained by the said swine, and for keeping same: Provided, That if the owner of such swine is unknown, the notice required in this act shall be published for two weeks in a newspaper published in the county. [Amendment, approved Mar. 7, 1899; L. 1899, p. 52.]

§ 3494a. Preventing the Spread of Disease Among Domestic Animals.

Unlawful to Import Any into State Without Certificate of Health.

That it shall be unlawful to bring into the state of Washington any horses, cattle or swine for work, feeding, breeding or dairy purposes: Provided, however, That shipments of horses, cattle and swine may be brought into the state of Washington after said horses, cattle and swine have been examined and found free from the following contagious diseases: Glanders, farcy, tuberculosis, actinomycis, rinderpest, foot and mouth diseases, contagious abortion, contagious keratitis, scabies, maladie du coit, swine plague and hog cholera, and a bill of health and a permit given by a state veterinarian, and assistant state veterinarian, a veterinarian of the United States bureau of animal industry, or by a veterinary acting under the order or direction of the livestock sanitary board of any state: Provided, That in the case of cattle over six months of age to be used for breeding or dairy purposes, the nonexistence of tuberculosis shall have been determined by the tuberculin test and certified to by the veterinary issuing the above mentioned certificate of health and permit; the certificate of health and permit given by the above mentioned veterinarian shall be given in duplicate, the original of which shall be forwarded to the state veterinarian of Washington, and the duplicate given to the railroad or transportation company to be attached to the bill of lading for said animals; and no railroad or transportation company—which is meant to include boats, ferries and bridges—shall accept any such animals for shipment into the state of Washington for work, feeding, breeding or dairy purposes without the bill of health and permit therein provided for, and no railroad or transportation company shall accept from its connecting lines any animals shipped in violation of this act.

Exceptions.

Animals brought into the state for the purpose of exhibition at town, county, district or state fairs shall not be subject to above regulations: Pro-

vided, however, That in event of sale being made from such exhibition, the animal sold shall be submitted to examination by the state veterinarian or his authorized deputy and thereby be subject to the rules and regulations governing native Washington cattle.

Transportation and Yard Companies—Duties—Penalties.

All railroad, livestock, transportation and stock-yard companies and their employees and all other persons are hereby forbidden to bring horses, cattle and swine into the state except in compliance with the foregoing regulations, and any violation of the same will constitute a misdemeanor and be punished accordingly. [Approved Mar. 16, 1903; L. 1903, p. 234.]

§ 3545. Horticulture.—Commissioner of.

That a commissioner of horticulture shall be appointed by the governor, for the state of Washington. It is hereby provided, prior to the appointment, the applicant must furnish a certificate from the faculty of the college of agriculture that he is a skilled horticulturist; on such certificate the governor may make the appointment. Before entering upon the discharge of his duties the said commissioner shall take and subscribe an oath to support the constitution of the United States, and the constitution and laws of the state of Washington, and to faithfully discharge the duties of his office, which said oath, together with the aforesaid certificate, shall be filed with the secretary of state. The said commissioner shall keep his office at Tacoma, which office shall be open to the public during normal office hours, every day excepting Sunday and legal holidays and days when he may be necessarily absent attending to official duties in other parts of his district.

§ 3546. Duties.

The objects for which said commissioner is appointed are to maintain and exercise a supervisory directory over the horticultural industries of the state, to enforce the laws, relative to the importation, transfer and sale of fruit, fruit trees, plants or nursery stock within the state, and to give such instructions to fruit culturists regarding cultivation, and extermination of fruit pests, as the nature of the case may demand. The official term of the said commissioner of horticulture shall begin on the first day of April, 1905, and continue for four years and until his successor is appointed and qualified. Such commissioner shall receive annually in full payment of his official services, the sum of two thousand dollars, to be paid monthly as other state officers, and for incidental expenses of his office, such as necessary traveling fare, stationery and postage, the sum of one thousand dollars annually, and for office rent and bulletins one thousand dollars annually. Said sum shall be paid on warrants drawn by the state auditor on the presentation of proper vouchers therefor. The term of the

present commissioner of horticulture shall expire April 1st, 1905. When from illness or other cause the commissioner of horticulture is temporarily unable to perform his duties, he may appoint some qualified person to discharge the duties of such office until such disability is removed. Said appointment shall be in writing, signed by the commissioner of horticulture and filed in his office. The appointment of such deputy may be revoked by the commissioner of horticulture at will. The commissioner of horticulture shall be responsible for the acts of his deputy: Provided, That no charge or claim shall ever be made against the state or any of its funds for compensation to such deputy.

§ 3547. Removal.

Said commissioner may be removed from office at any time for cause, such as inefficiency, neglect of duty or immoral conduct, but no removal from the office of commissioner of horticulture shall be made for political reasons. Vacancies occurring in the office of commissioner during a term shall be filled by the governor making an appointment for the unexpired term, under the rules and regulations as prescribed in section 1 of this act for full term appointment.

§ 3548. Horticultural Societies.

Fruit culturists in any county in this state are hereby authorized and empowered to organize into a county horticultural society, and the better to promote and protect the horticultural interests of the county the society will nominate a qualified person for county inspector of fruits, trees and plants, boxes, barrels and other packages in which fruits or trees have been shipped. The nomination shall be made to the board of commissioners (of the county wherein said society is organized), who are hereby authorized and required to appoint such person as county fruit inspector for a term of two years, deliver to him a certificate of appointment, and mail a duplicate copy of said certificate to the commissioner of horticulture: Provided, however, That county inspectors shall be required to pass a satisfactory examination before the state horticultural commissioner before they are authorized to perform the duties of their office. Said county inspectors shall be entitled to a per diem of \$4 per day and actual expenses for each day's actual service, to be paid by the county in which said inspector is appointed. Any county inspector shall be removed by the commissioner of horticulture for incompetency or neglect of duty, or other sufficient cause, upon complaint filed with him, signed by the proper officers of the horticultural society in the county in which such inspector is sought to be removed: Provided, That no such removal shall be made without giving such inspector a hearing and ten days' notice of the time and place thereof. In order to furnish to the office of commissioner of horticulture information regarding the condition of orchards throughout the state, and to determine the compensation of such county inspectors, they shall make monthly reports to the commissioner

of horticulture under oath upon blanks furnished by said commissioner and said commissioner of horticulture shall issue a certificate showing the number of days' work performed in each month, upon which the county inspector shall receive payment from the county in which inspection has been made: Provided, That such monthly report shall not be conclusive evidence of the number of days' work any county inspector has performed in any month. Any county inspector who shall in said report under oath falsely state the number of days' work he has actually performed in any month shall be deemed guilty of perjury and upon conviction thereof shall be liable to the penalty provided by law therefor.

§ 3549. License to Sell Fruit Trees.

No person, firm or corporation shall engage or continue in the business of selling as agent, solicitor or otherwise within the state, or importing fruit trees, plants or nursery stock into the state without first having obtained a license to carry on such business in the state, as in this act provided.

§ 3550. How Obtained—Bond—Liabilities on.

Any person, firm or corporation, agent or solicitor may obtain a license to engage or continue in the business of selling and importing fruit trees, plants or nursery stock into this state by submitting his application therefor to the commissioner of horticulture, together with a satisfactory bond of \$2,000, made in conformity with the laws of the state of Washington, such bond to be approved by and filed with the said commissioner, conditioned that the principal and his or their agents will faithfully obey the provisions of this act, the laws of the state of Washington, and that the said principal pays the costs of inspection and destruction of all infected nursery stock, or other material or goods imported into and sold within such district of this state by the said principal, his or their agent. Any person or persons shall have legal recourse against the bond for any damages accruing from the sale of or delivery of infected nursery stock. Licenses granted under this act shall be for two years or less, at the discretion of the commissioner. Any license granted to any person, firm or corporation shall be suspended in its operation by the commissioner of horticulture upon the report of any inspector that said person, firm or corporation has introduced infected stock into the state of Washington, and if upon examination by the commissioner such report of the inspector is found to be supported by facts, such license shall be at once revoked. The license fee for nurserymen and tree dealers shall be five dollars and for their agents or salesmen who shall be furnished an authentic copy, two dollars and fifty cents. Said moneys shall be collected by the state horticultural commissioner and paid to the general fund of the state treasury. All licenses shall expire on the first day of April, 1903, and on the first day of April every second year thereafter.

§ 3551. Notice to Commissioner of Shipments of Stock.

It shall be the duty of every person, firm or corporation licensed to do business under this act, to notify the horticultural commissioner of his intention to ship an invoice of fruit trees, plants or nursery stock from one point to another within the state, or to import an invoice of similar goods from without to any point within the state, whether for the purpose of sale or for personal use. Such notice shall contain the name and address of both the consignor and consignee, and a descriptive invoice of the goods to be shipped, the freight or express office at which the goods are to be delivered, and the name or title of the transportation company from which the consignees receive such goods. Such notice shall be mailed at least two days prior to the date of such shipment.

§ 3552. Penalties.

Any person, firm or corporation who shall sell within this state, or import into this state, any fruit trees, plants or nursery stock in violation of the provisions of this act, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined for each offense in any sum not less than fifty or more than one hundred dollars.

Any person who shall offer for sale or solicit persons within this state to purchase from him any fruit trees, plants or nursery stock belonging to any person or firm not licensed under the provisions of this act, shall be deemed guilty of a misdemeanor, and fined in any sum not less than fifty dollars nor exceeding one hundred dollars. All fines imposed for the violation of the provisions of this act shall be paid to the treasurer of the county wherein the violation was committed, and be placed to the credit of the general fund of such county.

§ 3554. To Prevent Spread of Disease—Provisions.

For the purpose of preventing the introduction and spread of contagious diseases, fruit pests, spores and fungus growth among fruit trees and plants and other nursery stock, and for the disinfecting and cure of fruit diseases, pests, spores and fungus growth, the commissioner of horticulture shall prescribe such remedies as he shall deem best, describe and formulate such remedies with their proper mode of application, with such additional instruction as he may deem necessary, into a circular or bulletin, which he shall have printed and distributed to the several county horticultural societies and inspectors of the state; he shall include also in said bulletins the rules and regulations under which a person, firm or corporation may lawfully sell, import into this state, and sell or authorize to be sold, fruit trees, plants or nursery stock, and the penalty to be incurred for the violation of these rules. He shall prepare also a poster which shall contain said rules, regulations and penalties, which shall be distributed with said bulletin. County inspectors are directed to put up said

posters in not less than three conspicuous places in their county, one of which places must be in front of the county courthouse. The commissioner of horticulture shall hear and promptly decide all appeals from the county inspectors, and his decision shall have full force and effect until set aside by the courts of the state. In all cases of appeal he shall disregard technicalities, and decide each and every case on its merits. All appeals from county inspectors to commissioners shall be under forms and regulations prescribed by the commissioner. The commissioner shall approve or reject all bonds required by law to be submitted to him, and he shall file and safely keep all bonds and other papers by law required to be filed with him, and shall, upon the expiration of his term of office turn over the same to his successor. He shall examine all fruit, specimens of fruit trees, shrubbery or plants submitted to him for examination, enter the name of the person presenting such specimens of fruit trees, shrubs or plants for examination, and the result of his examination in a register to be kept by him for that purpose, and send a copy of such result to the person asking for the examination. He shall, from time to time, as he may deem for best interests of the horticultural industries of the state, publish bulletins which shall be sent free to the various county horticultural societies of the state; such bulletins to contain a brief resumé of the discoveries of science of interest to horticulture, or any other matter which the commission shall deem of importance to such interest. And unless there be urgent or special need therefor, no bulletin shall contain any matter that has appeared in any previous bulletin.

§ 3555. County Inspectors—Powers.

County fruit inspectors who shall be appointed under and by authority of this act are hereby authorized, directed and empowered to enforce the provisions of this act to prevent the introduction and spread of fruit tree and plant diseases, insect pests, fungi spores, eggs or larvae of insects injurious to the fruit industries of his county or of this state.

§ 3555a. Absence of County Inspector—Substitution.

Whenever from any cause there shall be an absence of an inspector in any county, the commissioner of horticulture shall have power to order an inspector from any adjoining county in his district to perform the duties required by this act in the county needing the services of such inspector, and the expense of such inspection shall be chargeable to and paid for by the county in which the said services are rendered in the manner hereinbefore provided. The commissioner of horticulture shall have authority and he is hereby authorized, whenever in his judgment it is necessary, to appoint in writing one or more assistant county inspectors, who shall have the same powers and perform the same duties as county inspectors, such assistant inspectors shall be entitled to the same compensation to be paid in the same manner as county inspectors. The commissioner of horticulture shall have the power to revoke the appointment of such assistants at will.

§ 3556. Duties of County Inspector.

It is hereby made the duty of the county fruit inspector, if from his personal observation, complaint or other credible information, he has reason to suspect that any person, company or corporation, has an orchard, tree or nursery of trees, vines or garden, fruit packing house, storeroom, or that any other place or material in his county is infected with or is a repository for, eggs, larvae or any noxious insects injurious to fruit and plants or that any trees, fruit or plants, are in transit to his county from outside of this state, or are about to be disseminated or distributed within his county, which are known to be, or are suspected to be from localities that are infested with any disease or pest injurious, or that may become injurious to the fruit interests of his county or state, he shall without delay inspect the premises, property or material so suspected, and if the same is found to be infected as aforesaid, he shall notify the owner, his agents or the person in charge of the same, not to remove or allow the removal of such property until the same has been disinfected, prescribing the manner of disinfection; and shall direct the owner, agent or such person having such property in his charge to treat and disinfect the said premises and property within five days. If any person so notified shall permit the removal of, or fail to disinfect such property or premises in the manner and in the time prescribed in said notice, the person so notified and failing to disinfect the infected property or premises, or who shall permit the removal of the same prior to disinfection, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than \$50 nor more than \$100, and the cost of action in court, which fine and costs shall be a judgment lien upon said premises or property. After the expiration of ten days and a failure on the part of the owner or person in charge to disinfect the said premises or property as aforesaid, then, to prevent the spread of insect pests or disease, it will be the duty of the county inspector to enter on such premises or property and disinfect the same. The cost of such disinfection shall be a lien against said property or premises, the payment of which shall be collectible with other costs in any court of this state.

§ 3557. Penalties.

Any person or persons who shall bring into the state, to sell, offer for sale, distribute or give away fruit trees, shrubs, fruit or other material infested with any kind of insect pest injurious to fruit, fruit trees or plants, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars, or by imprisonment in the county jail not less than sixty days, nor more than one year: Provided, That for each repeated offense the person or persons convicted may be punished by a fine of not less than two hundred dollars or more than eight hundred dollars, or by imprisonment not to exceed two years. Any person or persons who shall sell, offer for sale, distribute or give away any tree or trees, root or roots,

grass, cuttings, or scions infected with insect pests, spores or fungus growth, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than fifty dollars nor more than two hundred dollars, or by imprisonment in the county jail not less than fifteen days, nor more than thirty days. A repetition of the offense shall subject the offender to increased penalty not over the maximum above stated. Any nursery trees, shrubs or plants which have been shipped from and to any place within the state for distribution or for planting, and which are infested with any injurious insect, larvae or fungus growth, shall be disinfected under the direction of the inspector of the county whereto such trees and plants are taken, and the cost of such disinfection shall be charged to the owner of said articles, and shall be a lien on such trees, shrubs or plants until paid, and the person in possession of said articles being held subject to lien shall have a legitimate claim against the party from whom he received the articles for reimbursement of costs, including cost of collection, and shall have recourse against the bond of the person furnishing the articles, and such claim may be enforced in any court of the state.

§ 3558. County Inspector to have Free Access to Orchards, etc.

The county fruit inspector shall, in the performance of his duties as such inspector, have on any day except Sunday free access to orchards, nurseries, gardens, hop fields, packing-houses, fruit stands, and storerooms where fruit may be kept; fruit boxes, full or empty, or any other material or place suspected of being infested with insect pests or disease injurious to the fruit interests of the state. If he find any nursery, orchard, garden or other place or material infested with insect or fungus growth, larvae or spores injurious to the fruit interests, he shall forthwith notify in writing, the owners, occupants or persons in possession thereof that the same is infected, prohibit their removal, and direct the manner in which the same shall be disinfected.

§ 3559. Owner Failing to Disinfect, Inspector may at Owner's Expense—May Destroy When.

If the owner, occupant or person in possession of said orchard, garden, storeroom, fruit stand or other place or infected material shall not within ten days disinfect the same in the manner by the county inspector required, or shall not have appealed to the decision of the county inspector through the commissioner of horticulture, if the premises infected be an orchard or nursery of fruit trees, a garden, fruit stand or storeroom, and the person or persons in charge thereof having neglected or refused to disinfect the said premises within the time specified in said notice, nor have appealed as aforesaid; then the county inspector shall enter on and disinfect any part or all of said premises so neglected, and the cost thereof shall be a legitimate charge and lien with interest until paid upon the real property of the owner of such premises so disinfected; such lien shall be collectible with costs in suit in any of the courts of the state as other lawful claims are collect-

ible. If the infected property be transportable material, the county inspector shall notify the person in charge thereof not to remove the same and to disinfect the same within 24 hours, and describe the manner of disinfection. If the person in charge of said infected material neglect or refuse to disinfect the same as notified, or fail to appeal, then the inspector shall destroy such infected material as fruits, fruit boxes, baskets, wrappings, portable fruit stands, by burning the same. If an appeal be taken the inspector shall after 24 hours' notice take immediate possession of such movable property and safely keep them until the appeal is decided. If the decision of the commissioner be in favor of the appellant, the property shall be returned to him; on an adverse decision the property must be destroyed by the inspector. All appeals from the action or demand of the county inspector shall be taken to the state commissioner of horticulture.

§ 3560. Compensation of Inspectors.

The said commissioner of horticulture shall be allowed seven hundred dollars (\$700) per annum for the employment of one office clerk who shall be continually in the office of the commissioner during normal office hours, and whose salary shall be paid monthly.

§ 3561. Exhibit of Fruits.

There shall be kept and maintained in the office of the commissioner in the city of Tacoma an exhibit of the fruits of the state of Washington and for the maintenance of such exhibit an annual appropriation of three hundred dollars (\$300) is hereby made, to be paid out upon warrants drawn by the state auditor upon presentation of proper vouchers.

§ 3562. Inspector's Institutes—Failure to Attend—Penalty.

An annual "inspector's" institute shall be held during the month of January at the agricultural college in Pullman. The commissioner of horticulture shall fix the date of convening of such institute and by written notices direct the attendance of all county inspectors. The commissioner shall preside over and formulate the proceedings of the institute, which shall continue for four days. As the purpose of these institutes is improvement and conference, and study of subjects of experimentation, by the scientist of the college along entomologist and horticultural lines it is required that all county inspectors shall attend such institute meetings unless prevented by illness. Failure to attend on the part of the inspector shall work a forfeiture of his office and it shall be the duty of the commissioner to inform county commissioners of the absence of their inspectors. Inspectors attending institutes shall be allowed their actual traveling expenses and hotel bills on vouchers indorsed by the commissioner or chairman of institute, said expenses to be paid by the respective counties.

§ 3563. Penalties for Hindrances to act.

Any person offering any hindrance to the carrying out of this act or in any manner preventing or hindering any inspection herein provided for shall

upon conviction be fined not less than twenty-five dollars nor more than two hundred dollars, together with costs.

§ 3564. Repeal.

A certain act approved March 17th, 1897, and entitled "An act to promote and protect the fruit growing and horticultural interests of the state of Washington, to provide for the appointment of commissioner of horticulture, and to repeal certain laws in conflict therewith," and all other laws or parts of laws inconsistent with or in conflict with the provisions of this act, are hereby repealed.

An emergency exists and this act shall take effect immediately. [Approved Mar. 16, 1903; L. 1903, p. 246.]

§ 3565. Inspector of Hops, Created.

The governor of the state of Washington shall appoint some suitable person whose duties it shall be to inspect hops and determine and fix the grade or quality thereof as hereinafter provided.

Duties of Inspector.

Any person, firm, company or corporation owning hops within said state of Washington, who may contract for the future sale of his, her, or their hops or give a chattel mortgage on any crop of hops yet to be grown, for money advanced by the mortgagee to be used in cultivating and harvesting said crop, or any person, firm, company or corporation contracting to buy any crop of hops yet to be grown, or who takes a chattel mortgage on any such crop may if such owner, buyer, or mortgagee cannot agree on the grade of said hops when in the bale and ready for delivery, call upon said hop inspector to inspect said hops and determine and fix the grade or quality thereof, and issue to each of said parties a certificate specifying the name of the owner, the buyer or mortgagee, the date of inspection and the grade or quality fixed by him.

The certificate of said hop inspector stating the grade or quality of any hops shall be prima facie evidence of the same.

Compensation.

Said hop inspector shall be paid five dollars per day for each day actually engaged in the performance of his duties, together with mileage and necessary expenses, to be paid equally by said owner, and said buyer or mortgagee. [Approved Mar. 13, 1899; L. 1899, p. 161.]

§ 3568. Bounty on Sugar.

There shall be paid out of the state treasury to any person, firm or corporation engaging in the manufacture of sugar in this state from beets, grown in the state of Washington, the sum of one cent per pound upon each and every pound of sugar so manufactured under the conditions and restrictions of this act.

§ 3569. Must Have 90 per cent Crystallized Sugar.

No bounty shall be paid upon sugar not containing at least ninety per cent of crystallized sugar, and only upon sugar produced from beets for which not less than four dollars per ton has been paid to the producer. The quantity and quality upon which said bounty is claimed shall be determined by the president of the state agricultural college, with whom all claimants shall from time to time file verified statements showing the quantity and quality of sugar manufactured by them and the price paid the producer for beets and the amount of sugar manufactured upon which said bounty is claimed. The president of the agricultural college shall, without unnecessary delay, visit or cause to be visited by such persons as he shall designate in writing as inspectors, the factory where said sugar has been produced or manufactured, and inspect the sugar so manufactured, and take such evidence by sworn testimony of the officers or employees of such factory or others as to the amount and quality of sugar so manufactured and the price paid for the beets as to him or the person designated by him shall appear satisfactory and conclusive.

§ 3570. How Paid.

When any claim arising under this act is filed, verified and proven to the satisfaction of the president of the agricultural college as herein provided, he shall certify the same to the auditor of the state, who shall draw a warrant upon the state treasurer for the amount due thereon payable to the party or parties to whom the said sum or sums are due: Provided, That no greater sum than fifty thousand dollars shall be paid out of the state treasury as a bounty in any one year.

§ 3571. To Whom Paid.

The benefits of this act shall accrue to any person, firm or corporation that shall erect and complete a sugar manufactory or manufactories within the state prior to November first, 1901, and the bounty herein provided shall be paid said person, firm or corporation for a period of three years from the time such factories shall have been completed and in operation. This act shall be taken and considered to be a contract irrevocable with all such persons, firms or corporations as shall complete the erection of such manufactory or manufactories prior to November first, 1901. [Approved Feb. 21, 1899; L. 1899, p. 24.]

§ 3580. Destruction of Canada Thistles.

It shall be the duty of every owner, possessor or occupier of land in this state to cut down or cause to be cut down all the Canada or Russian thistles growing thereon so often in each and every year as shall be sufficient to prevent them going to seed.

Penalties for Failure to Destroy.

If any owner, possessor or occupier of land shall knowingly suffer any such Canada or Russian thistles to grow thereon and the seed to ripen he shall be guilty of a misdemeanor, and upon conviction thereof be liable to a fine of not exceeding twenty dollars for each offense and cost of prosecution.

Duties of Road Supervisor in Respect to.

It shall be the duty of each road supervisor in each road district in this state to see that the provisions of this act are carried out within their respective districts, and he shall give notice to the owner, possessor or occupier of any land within his district, whereon Canada or Russian thistles are growing, requiring him to cause the same to be cut down within ten days from the service of such notice, and in case such owner, possessor or occupier shall refuse or neglect to cut down the said Canada or Russian thistles within the said ten days, then the said road supervisor shall enter upon the land and cause all of said thistles to be cut down with as little damage to growing crops as may be; and he shall not be liable for trespass therefor: Provided, That when such Canada or Russian thistles are growing upon nonresident's land and the same is unoccupied it shall not be necessary to give such notice before proceeding to cut down Canada or Russian thistles: "And provided, That in the case of Canada or Russian thistles growing on the right of way of any railroad said notice required in this section shall be served upon the section foreman who has charge of that portion of the right of way where said Canada or Russian thistles may be growing."

To Keep Accounts of Expense.

Each road supervisor shall keep an accurate account of the expenses incurred by him in carrying out the provisions of this act, with respect to each parcel of land entered upon therefor, and shall offer or send by mail a statement of such expenses, including a description of the premises, verified by oath, to the owner, possessor or occupier of such land, requiring him to pay the amount. In case such owner, possessor or occupier shall fail to pay the same within thirty days after such application said claim shall be presented to the board of county commissioners of the county in which said expenses were incurred, and the same, if found correct, shall be paid the same as other claims against the road district.

Premises Taxed Therefor.

The board of county commissioners to which said claim is presented shall order the said claim to be a tax upon the premises described therein, and the same shall be levied as a tax upon said premises and entered upon the tax-rolls for the current year and collected together with penalty and interest as other taxes are collected, and when so collected paid into the road district fund in which the land is situated.

Applicable to Cities and Towns.

This law is applicable to cities and towns and when applied to cities and towns the duties enumerated in this act devolving upon the road supervisor and county commissioners shall devolve upon the city or town council, and the taxes collected on premises situated in cities or towns shall be used for the use and benefit of the streets of the cities therein.

Destruction to be Road Work.

Each road supervisor of this state shall destroy all Canada or Russian thistles and prevent the same from going to seed in the highways of his dis-

strict, and shall be paid therefor in the same manner as in doing other work upon public roads.

Penalty for Failure to Perform Duty in Respect to.

Any citizen may notify the road supervisor or county commissioners of the presence of Canadian thistles or Russian thistles who, upon receiving such notice, shall enforce the provisions of this act; and failure upon the part of the road supervisor to act after notice from the county commissioners within ten days of such notice shall subject him to a fine of not more than ten dollars for the first offense and not less than ten dollars or more than twenty dollars for each succeeding offense; and continued refusal or neglect shall subject him to removal from office. [Approved Mar. 8, 1899; L. 1899, p. 74.]

§ 3590. Warehouse, receipt of.—The fact that Ballinger's Code, section 3590, defines the nature of a warehouse receipt would not preclude parties from making a contract of storage upon such terms and conditions as they choose: *Windell v. Readman Warehouse Co.*, 30 Wash. 469, 71 Pac. 56.

§ 3596. Warehousemen—Receipts, duty of operator as to.—A complaint against a public warehouseman for conversion of wheat states a cause of action, when it alleges that the wheat was stored in defendant's warehouse and a receipt therefor issued to the owner, not in the form of a warehouse receipt, as prescribed by statute, but in the form of a memorandum slip with instructions to be returned for storage ticket, and notice not to buy the slip printed thereon; that the owner sold the wheat to another, who transferred same to plaintiff, together with the memorandum receipt, which passed by indorsement of the several transferees to plaintiff; that plaintiff presented the memorandum and demanded a regular warehouse receipt, and, upon the same being refused, demanded the wheat or the value thereof, tendering all storage and other legal charges due on the wheat: *First Nat. Bank of Pullman v. Young*, 20 Wash. 337, 55 Pac. 215.

§ 3598. Bills of lading—Negotiable.—Under both commercial usage and the statute of this state, where a carrier issues a bill of lading for goods delivered to it for shipment, it should demand and receive the bill of lading before delivery in order to avoid liability; and even its delivery of the goods to a consignee designated in the bill of lading will not exonerate it from liability unless such delivery be made upon the production of the bill of lading: *First Nat. Bank v. Northern Pacific Ry. Co.*, 28 Wash. 439, 68 Pac. 965.

§ 3599. Warehouse receipts—Assignment of by indorsement.—An indorsement of a warehouse receipt under this act operates only as a transfer of the holder's interest in the property receipted for. This section held to be modified or repealed by section 3598: *Yarwood v. Happy*, 18 Wash. 246, 51 Pac. 461.

§ 3600. Bills of lading—Transfer of—Effect.—The power of indorsement is not restricted to the consignee, but the carrier who has delivered such a bill of lading to the shipper is conclusively charged with knowledge of the fact, and of its negotiability both by custom and statute: *First Nat. Bank v. Northern Pacific Ry. Co.*, 28 Wash. 439, 68 Pac. 965.

§ 3650. Of Bills of Exchange and Promissory Notes. *See L. 1905, p. 112*

Negotiable, When.

An instrument to be negotiable must conform to the following requirements:

1. It must be in writing and signed by the maker or drawer;
2. Must contain an unconditional promise or order to pay a sum certain in money;
3. Must be payable on demand, or at a fixed or determinable future time;
4. Must be payable to order or to bearer; and,
5. Where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty.

The sum payable is a sum certain within the meaning of this act, although it is to be paid—

1. With interest; or
2. By stated installments; or
3. By stated installments, with a provision that upon default in payment of any installment or of interest, the whole shall become due; or
4. With exchange, whether at a fixed rate or at the current rate; or
5. With costs of collection or an attorney's fee, in case payment shall not be made at maturity.

An unqualified order or promise to pay is unconditional within the meaning of this act, though coupled with—

1. An indication of a particular fund out of which reimbursement is to be made, or a particular account to be debited with the amount; or
2. A statement of the transaction which gives rise to the instrument.

Order on Particular Fund, not.

But an order to promise to pay only out of a particular fund is not unconditional.

An instrument is payable at a determinable future time, within the meaning of this act, which is expressed to be payable—

1. At a fixed period after date or sight; or
2. On or before a fixed or determinable future time specified therein; or
3. On or at a fixed period after the occurrence of a specified event, which is certain to happen, though the time of happening be uncertain.

Non-negotiable.

An instrument payable upon a contingency is not negotiable, and the happening of the event does not cure the defect.

An instrument which contains an order or promise to do any act in addition to the payment of money is not negotiable. But the negotiable character of an instrument otherwise negotiable is not affected by a provision which—

1. Authorizes the sale of collateral securities in case the instrument be not paid at maturity; or
2. Authorizes a confession of judgment if the instrument be not paid at maturity; or
3. Waives the benefit of any law intended for the advantage or protection of the obligor; or
4. Gives the holder an election to require something to be done in lieu of payment of money.

But nothing in this section shall validate any provision or stipulation otherwise illegal.

Validity and Negotiability not Affected by.

The validity and negotiable character of an instrument are not affected by the fact that—

1. It is not dated; or

2. Does not specify the value given, or that any value has been given therefor; or
3. Does not specify the place where it is drawn or the place where it is payable; or
4. Bears a seal; or
5. Designates a particular kind of current money in which payment is to be made.

But nothing in this section shall alter or repeal any statute requiring in certain cases the nature of the consideration to be stated in the instrument.

Payable on Demand, What are.

An instrument is payable on demand—

1. Where it is expressed to be payable on demand, or at sight, or on presentation; or
2. In which no time for payment is expressed.

Where an instrument is issued, accepted, or indorsed when overdue, it is, as regards the person so issuing, accepting, or indorsing it, payable on demand.

Payable to Order.

The instrument is payable to order where it is drawn payable to the order of a specified person or to him or his order. It may be drawn payable to the order of—

1. A payee who is not maker, drawer, or drawee; or
2. The drawer or maker; or
3. The drawee; or
4. Two or more payees jointly; or
5. One or some of several payees; or
6. The holder of an office for the time being.

Where the instrument is payable to order the payee must be named or otherwise indicated therein with reasonable certainty.

The instrument is payable to bearer—

1. When it is expressed to be so payable; or
2. When it is payable to a person named therein or bearer; or
3. When it is payable to the order of a fictitious or nonexistent person, and such fact was known to the person making it so payable; or
4. When the name of the payee does not purport to be the name of any person; or
5. When the only or last indorsement is an indorsement in blank.

Language of Act not Necessary—Intent to Govern.

The instrument need not follow the language of this act, but any terms are sufficient which clearly indicate an intention to conform to the requirements hereof.

Date of, Prima Facie Correct.

Where the instrument or an acceptance or any indorsement thereon is dated, such date is deemed prima facie to be the true date of the making, drawing, acceptance or indorsement as the case may be.

Not Invalid Because Ante or Post Dated.

The instrument is not invalid for the reason only that it is antedated or postdated, provided this is not done for an illegal or fraudulent purpose. The person to whom an instrument so dated is delivered acquires the title thereto as of the date of delivery.

Blanks in, may be Filled by Holder, When.

Where an instrument expressed to be payable at a fixed period after date is issued undated, or where the acceptance of an instrument payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the instrument shall be payable accordingly. The insertion of a wrong date does not avoid the instrument in the hands of a subsequent holder in due course; but as to him, the date so inserted is to be regarded as the true date.

Where the instrument is wanting in any material particular, the person in possession thereof has a prima facie authority to complete it by filling up the blanks therein. And a signature on a blank paper delivered by the person making the signature in order that the paper may be converted into a negotiable instrument operates as a prima facie authority to fill it up as such for any amount. In order, however, that any such instrument when completed may be enforced against any person who became a party thereto prior to its completion, it must be filled up strictly in accordance with the authority given and within a reasonable time. But if any such instrument, after completion, is negotiated to a holder in due course, it is valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up strictly in accordance with the authority given and within a reasonable time.

Completed and Negotiated Without Authority not Valid.

Where an incomplete instrument has not been delivered it will not, if completed and negotiated, without authority, be a valid contract in the hands of any holder, as against any person whose signature was placed thereon before delivery.

Delivery Essential to Validity.

Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto. As between immediate parties, and as regards a remote party other than a holder in due course, the delivery, in order to be effectual, must be made either by or under the authority of the party making, drawing, accepting, or indorsing, as the case may be; and in such case the delivery may be shown to have been conditional, or for a special purpose only, and not for the purpose of transferring the property in the instrument. But where the instrument is in the hands of a holder in due course, a valid delivery thereof by all parties prior to him so as to make them liable to him is conclusively presumed. And where the instrument is no longer in the possession of a party whose signature appears thereon, a valid and intentional delivery by him is presumed until the contrary is proved.

Ambiguities—Rules of Construction.

Where the language of the instrument is ambiguous, or there are omissions therein, the following rules of construction apply—

1. Where the sum payable is expressed in words and also in figures and there is a discrepancy between the two, the sum denoted by the words is the sum payable; but if the words are ambiguous or uncertain, references may be had to the figures to fix the amount;

2. Where the instrument provides for the payment of interest, without specifying the date from which interest is to run, the interest runs from the date of the instrument, and if the instrument is undated, from the issue thereof;

3. Where the instrument is not dated, it will be considered to be dated as of the time it was issued;

4. Where there is a conflict between the written and printed provisions of the instrument, the written provisions prevail;

5. Where the instrument is so ambiguous that there is doubt whether it is a bill or note, the holder may treat it as either at his election;

6. Where a signature is so placed upon the instrument that it is not clear in what capacity the person making the same intended to sign, he is to be deemed an indorser;

"I Promise to Pay"—Effect of.

7. Where an instrument containing the words "I promise to pay" is signed by two or more persons, they are deemed to be jointly and severally liable thereon.

Signature Essential.

No person is liable on the instrument whose signature does not appear thereon, except as herein otherwise expressly provided. But one who signs in a trade or assumed name will be liable to the same extent as if he had signed his own name.

Agency, in.

The signature of any party may be made by a duly authorized agent. No particular form of appointment is necessary for this purpose; and the authority of the agent may be established as in other cases of agency.

Where the instrument contains or a person adds to his signature words indicating that he signs for or on behalf of a principal, or in a representative capacity, he is not liable on the instrument if he was duly authorized; but the mere addition of words describing him as an agent, or as filling a representative character, without disclosing his principal, does not exempt him from personal liability.

A signature by "procuration" operates as notice that the agent has but a limited authority to sign, and the principal is bound only in case the agent in so signing acted within the actual limits of his authority.

Indorsement by Noncompetent—Effect of.

The indorsement or assignment of the instrument by a corporation or by an infant passes the property therein, notwithstanding that from want of capacity the corporation or infant may incur no liability thereon.

Forgery—Effect of.

Where a signature is forged or made without the authority of the person whose signature it purports to be, it is wholly inoperative, and no right to retain the instrument, or to give a discharge therefor, or to enforce payment thereof against any party thereto, can be acquired through or under such signature, unless the party, against whom it is sought to enforce such right, is precluded from setting up the forgery or want of authority.

Value Presumed.

Every negotiable instrument is deemed prima facie to have been issued for a valuable consideration; and every person whose signature appears thereon to have become a party thereto for value.

Value is any consideration sufficient to support a simple contract. An antecedent or pre-existing debt constitutes value; and is deemed such whether the instrument is payable on demand or at a future time.

Holder for Value.

Where value has at any time been given for the instrument, the holder is deemed a holder for value in respect to all parties who became such prior to that time.

Where the holder has a lien on the instrument, arising either from contract or by implication of law, he is deemed a holder for value to the extent of his lien.

Failure of Consideration—Defense.

Absence or failure of consideration is matter of defense as against any person not a holder in due course; and partial failure of consideration is a defense pro tanto, whether the failure is an ascertained and liquidated amount or otherwise.

Accommodation Party, Who is.

An accommodation party is one who has signed the instrument as maker, drawer, acceptor or indorser, without receiving value therefor, and for the purpose of lending his name to some other person. Such a person is liable on the instrument to a holder for value, notwithstanding such holder at the time of taking the instrument knew him to be only an accommodation party.

When Negotiated.

An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof. If payable to bearer it is negotiated by delivery; if payable to order it is negotiated by the indorsement of the holder completed by delivery.

Indorsement, How Made.

The indorsement must be written on the instrument itself or upon a paper attached thereto. The signature of the indorser, without additional words, is a sufficient indorsement.

What is Indorsement.

The indorsement must be an indorsement of the entire instrument. An indorsement, which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the instrument to two or more indorsees severally, does not operate as a negotiation of the instrument. But where the instrument has been paid in part, it may be indorsed as to the residue.

Nature of.

An indorsement may be either special or in blank; and it may also be either restrictive or qualified, or conditional.

Special.

A special indorsement specifies the person to whom, or to whose order, the instrument is to be payable; and the indorsement of such indorsee is necessary to the further negotiation of the instrument. An indorsement in blank specifies no indorsee, and an instrument so indorsed is payable to bearer, and may be negotiated by delivery.

Blank and Special.

The holder may convert a blank indorsement into a special indorsement by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement.

Restrictive.

An indorsement is restrictive, which either—

1. Prohibits the further negotiation of the instrument; or
2. Constitutes the indorsee the agent of the indorser; or
3. Vests the title in the indorsee in trust for or to the use of some other person.

But the mere absence of words implying power to negotiate does not make an indorsement restrictive.

Rights Under.

A restrictive indorsement confers upon the indorsee the right—

1. To receive payment of the instrument;
2. To bring any action thereon that the indorser could bring;
3. To transfer his rights as such indorsee, where the form of the indorsement authorizes him to do so.

Subsequent Indorsee's Title Under.

But all subsequent indorsees acquire only the title of the first indorsee under the restrictive indorsement.

Qualified, Effect of.

A qualified indorsement constitutes the indorser a mere assignor of the title to the instrument. It may be made by adding to the indorser's signature the words "without recourse" or any words of similar import. Such an indorsement does not impair the negotiable character of the instrument.

Conditional, Payor may Disregard.

Where an indorsement is conditional, a party required to pay the instrument may disregard the condition, and make payment to the indorsee or his transferee, whether the condition has been fulfilled or not. But any person to whom an instrument so indorsed is negotiated, will hold the same, or the proceeds thereof, subject to the rights of the person indorsing conditionally.

To Bearer, Specially Indorsed, Effect.

Where an instrument, payable to bearer, is indorsed specially, it may nevertheless be further negotiated by delivery; but the person indorsing specially is liable as indorser to only such holders as make title through his indorsement.

To Order of Two or More, Indorsement.

Where an instrument is payable to the order of two or more payees or indorsees who are not partners, all must indorse, unless the one indorsing has authority to indorse for the others.

To "Cashier," Effect of.

Where an instrument is drawn or indorsed to a person as "cashier" or other fiscal officer of a bank or corporation, it is deemed prima facie to be payable to the bank or corporation of which he is such officer; and may be negotiated by either the indorsement of the bank or corporation, or the indorsement of the officer.

Name of Payee Misspelled or Incorrectly Designated, Effect.

Where the name of a payee or indorsee is wrongly designated or misspelled, he may indorse the instrument as therein described, adding, if he think fit, his proper signature.

Indorsement in Representative Capacity.

Where any person is under obligation to indorse in a representative capacity, he may indorse in such terms as to negative personal liability.

Presumption of Negotiation Before Due.

Except where an indorsement bears date after the maturity of the instrument, every negotiation is deemed prima facie to have been effected before the instrument was overdue.

Except where the contrary appears, every indorsement is presumed prima facie to have been made at the place where the instrument is dated.

Negotiability Continues, When.

An instrument negotiable in its origin continues to be negotiable until it has been restrictively indorsed or discharged by payment or otherwise.

Holder may Strike Indorsement, Effect on Subsequent Indorsers.

The holder may at any time strike out any indorsement which is not necessary to his title. The indorser whose indorsement is struck out, and all indorsers subsequent to him, are thereby relieved from liability on the instrument.

Where the holder of an instrument payable to his order transfers it for value without indorsing it, the transfer vests in the transferee such title as the

transferrer had therein, and the transferee acquires, in addition, the right to have the indorsement of the transferrer. But for the purpose of determining whether the transferee is a holder in due course, the negotiation takes effect as of the time when the indorsement is actually made.

Prior Holder Receiving Back may Negotiate.

Where an instrument is negotiated back to a prior party, such party may, subject to the provisions of this act, reissue and further negotiate the same. But he is not entitled to enforce payment thereof against any intervening party to whom he was personally liable.

Holder may Sue in Own Name.

The holder of a negotiable instrument may sue thereon in his own name; and payment to him in due course discharges the instrument.

Holder in Due Course, Who is.

A holder in due course is a holder who has taken the instrument under the following conditions:—

1. That it is complete and regular upon its face;
2. That he became the holder of it before it was overdue, and without notice that it had been previously dishonored, if such was the fact;
3. That he took it in good faith and for value;
4. That at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it.

Other than Holder in Due Course, Rights of.

Where an instrument payable on demand is negotiated an unreasonable length of time after its issue, the holder is not deemed a holder in due course.

Where the transferee receives notice of any infirmity in the instrument or defect in the title of the person negotiating the same before he has paid the full amount agreed to be paid therefor, he will be deemed a holder in due course only to the extent of the amount theretofore paid by him.

The title of a person who negotiates an instrument is defective within the meaning of this act when he obtained the instrument, or any signature thereto, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud.

To constitute notice of an infirmity in the instrument or defect in the title of the person negotiating the same, the person to whom it is negotiated must have had actual knowledge of the infirmity or defect, or knowledge of such facts that his action in taking the instrument amounted to bad faith.

Title of—Defenses Against.

A holder in due course holds the instrument free from any defect of title of prior parties, and free from defenses available to prior parties among themselves, and may enforce payment of the instrument for the full amount thereof against all parties liable thereon.

In the hands of any holder other than a holder in due course, a negotiable instrument is subject to the same defenses as if it were non-negotiable. But a holder who derives his title through a holder in due course, and who is not himself a party to any fraud or illegality affecting the instrument, has all the rights of such former holder in respect of all parties prior to the latter.

Prima Facie as to.

[Every] holder is deemed prima facie to be a holder in due course; but when it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title as holder in due course. But the last mentioned rule does not apply in favor of a party who became bound on the instrument prior to the acquisition of such defective title.

Maker's Undertaking.

The maker of a negotiable instrument by making it engages that he will pay it according to its tenor, and admits the existence of the payee and his then capacity to indorse.

Drawer's Undertaking.

The drawer by drawing the instrument admits the existence of the payee and his then capacity to indorse; and engages that on due presentment the instrument will be accepted or paid, or both, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it. But the drawer may insert in the instrument an express stipulation negating or limiting his own liability to the holder.

Acceptor's Undertaking.

The acceptor by accepting the instrument engages that he will pay it according to the tenor of his acceptance; and admits—

1. The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the instrument; and
2. The existence of the payee and his then capacity to indorse.

Persons Signing, not Maker, Drawer or Acceptor Deemed Indorser.

A person placing his signature upon an instrument otherwise than as maker, drawer or acceptor is deemed to be an indorser, unless he clearly indicates by appropriate words his intention to be bound in some other capacity.

Stranger Signing in Blank Before Delivery Liable as Indorser, When.

Where a person, not otherwise a party to an instrument, places thereon his signature in blank before delivery, he is liable as indorser in accordance with the following rules:

1. If the instrument is payable to the order of a third person, he is liable to the payee and to all subsequent parties.
2. If the instrument is payable to the order of the maker or drawer, or is payable to bearer, he is liable to all parties subsequent to the maker or drawer.

3. If he signs for the accommodation of the payee, he is liable to all parties subsequent to the payee.

Negotiator by Delivery or Qualified Indorsement Warrants What.

Every person negotiating an instrument by delivery or by a qualified indorsement, warrants—

1. That the instrument is genuine and in all respects what it purports to be;
2. That he has a good title to it;
3. That all prior parties had capacity to contract;
4. That he has no knowledge of any fact which would impair the validity of the instrument or render it valueless.

By Delivery Only.

But when the negotiation is by delivery only, the warranty extends in favor of no holder other than the immediate transferee.

Not Applicable to Public Securities.

The provisions of subdivision three of this section do not apply to persons negotiating public or corporate securities, other than bills and notes.

Unqualified Indorser Warrants.

Every indorser who indorses without qualification, warrants to all subsequent holders in due course—

1. The matters and things mentioned in subdivisions one, two and three of the next preceding section; and
2. That the instrument is at the time of his indorsement valid and subsisting.

And, in addition, he engages that on due presentment, it shall be accepted or paid, or both, as the case may be, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it.

Indorsement of Instrument Negotiable by Delivery.

Where a person places his indorsement on an instrument negotiable by delivery he incurs all the liabilities of an indorser.

Liability to Each Other.

As respects one another, indorsers are liable prima facie in the order in which they indorse; but evidence is admissible to show that as between or among themselves they have agreed otherwise. Joint payees or joint indorseees who indorse are deemed to indorse jointly and severally.

Agent, Without Indorsement.

Where a broker or other agent negotiates an instrument without indorsement, he incurs all the liabilities prescribed by section sixty-five of this act, unless he discloses the name of his principal, and the fact that he is acting only as agent.

Presentment for Payment.

Presentment for payment is not necessary in order to charge the person primarily liable on the instrument; but if the instrument is, by its terms, payable at a special place, and he is able and willing to pay it there at maturity, such ability and willingness are equivalent to a tender of payment upon his part. But except as herein otherwise provided, presentment for payment is necessary in order to charge the drawer and indorsers.

When Made.

Where the instrument is not payable on demand, presentment must be made on the day it falls due. Where it is payable on demand, presentment must be made within a reasonable time after its issue, except that in the case of a bill of exchange, presentment for payment will be sufficient if made within a reasonable time after the last negotiation thereof.

By Whom Made.

Presentment for payment, to be sufficient, must be made—

1. By the holder, or by some person authorized to receive payment on his behalf.
2. At a reasonable hour on a business day;
3. At a proper place as herein defined;
4. To the person primarily liable on the instrument, or if he is absent or inaccessible, to any person found at the place where the presentment is made.

Place of.

Presentment for payment is made at the proper place—

1. Where a place of payment is specified in the instrument and it is there presented;
2. Where no place of payment is specified, but the address of the person to make payment is given in the instrument and it is there presented;
3. Where no place of payment is specified and no address is given and the instrument is presented at the usual place of business or residence of the person to make payment;
4. In any other case if presented to the person to make payment wherever he can be found, or if presented at his last known place of business or residence.

The instrument must be exhibited to the person from whom payment is demanded, and when it is paid must be delivered up to the party paying it.

Where the instrument is payable at a bank, presentment for payment must be made during banking hours, unless the person to make payment has no funds there to meet it at any time during the day, in which case presentment at any hour before the bank is closed on that day is sufficient.

Where the person primarily liable on the instrument is dead, and no place of payment is specified, presentment for payment must be made to his personal representative if such there be, and if, with the exercise of reasonable diligence, he can be found.

Where the persons primarily liable on the instrument are liable as partners, and no place of payment is specified, presentment for payment may be made to any one of them, even though there has been a dissolution of the firm.

Where there are several persons not partners, primarily liable on the instrument and no place of payment is specified, presentment must be made to them all.

Presentment Unnecessary, When.

Presentment for payment is not required in order to charge the drawer where he has no right to expect or require that the drawee or acceptor will pay the instrument.

Presentment for payment is not required in order to charge an indorser where the instrument was made or accepted for his accommodation and he has no reason to expect that the instrument will be paid if presented.

Delay in Making.

Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, presentment must be made with reasonable diligence.

Presentment for payment is dispensed with—

1. Where after the exercise of reasonable diligence presentment as required by this act cannot be made;

2. Where the drawee is a fictitious person;

3. By waiver of presentment, express or implied.

The instrument is dishonored by nonpayment when—

1. It is duly presented for payment and payment is refused or cannot be obtained; or

2. Presentment is excused and the instrument is overdue and unpaid.

Inability Accrues, When.

Subject to the provisions of this act, when the instrument is dishonored by nonpayment, an immediate right of recourse to all parties secondarily liable thereon accrues to the holder.

Without Grace.

Every negotiable instrument is payable at the time fixed therein without grace. When the day of maturity falls upon Sunday, or a holiday, the instrument is payable on the next succeeding business day. Instruments falling due on Saturday are to be presented for payment on the next succeeding business day, except that instruments payable on demand may at the option of the holder, be presented for payment before 12 o'clock noon on Saturday when that entire day is not a holiday.

Computation of Time—Rule.

Where the instrument is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run, and by including the date of payment.

Payable at Bank—Effect.

Where the instrument is made payable at a bank it is equivalent to an order to the bank to pay the same for the account of the principal debtor thereon. }

Payment in Due Course.

Payment is made in due course when it is made at or after the maturity of the instrument to the holder thereof in good faith and without notice that his title is defective.

Notice of Dishonor.

Except as herein otherwise provided, when a negotiable instrument has been dishonored by nonacceptance or nonpayment, notice of dishonor must be given to the drawer and to each indorser, and any drawer or indorser to whom such notice is not given is discharged.

Written Notice not Required.

The notice may be given by or on behalf of the holder, or by or on behalf of any party to the instrument who might be compelled to pay it to the holder, and who, upon taking it up, would have a right to reimbursement from the party to whom the notice is given.

Notice of dishonor may be given by an agent either in his own name or in the name of any party entitled to give notice, whether that party be his principal or not.

Where notice is given by or on behalf of the holder, it inures for the benefit of all subsequent holders and all prior parties who have a right of recourse against the party to whom it is given.

Where notice is given by or on behalf of a party entitled to give notice, it inures for the benefit of the holder and all parties subsequent to the party to whom notice is given.

Where the instrument has been dishonored in the hands of an agent, he may either himself give notice to the parties liable thereon, or he may give notice to his principal. If he give notice to his principal, he must do so within the same time as if he were the holder, and the principal upon the receipt of such notice has himself the same time for giving notice as if the agent had been an independent holder.

Notice—How Given.

A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the instrument does not vitiate the notice unless the party to whom the notice is given is in fact misled thereby.

The notice may be in writing or merely oral and may be given in any terms which sufficiently identify the instrument, and indicate that it has been dishonored by nonacceptance or nonpayment. It may in all cases be given by delivering it personally or through the mails.

To Whom Given.

Notice of dishonor may be given either to the party himself or to his agent in that behalf.

Deceased Parties.

When any party is dead, and his death is known to the party giving notice, the notice must be given to a personal representative, if there be one, and if

with reasonable diligence he can be found. If there be no personal representative, notice may be sent to the last residence or last place of business of the deceased.

Partners.

Where the parties to be notified are partners, notice to any one partner, is notice to the firm even though there has been a dissolution.

To Joint Parties.

Notice to joint parties who are not partners must be given to each of them, unless one of them has authority to receive such notice for the others.

Bankrupts.

Where a party has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, notice may be given either to the party himself or to his trustee or assignee.

When Given.

Notice may be given as soon as the instrument is dishonored; and unless delay is excused as hereinafter provided, must be given within the times fixed by this act.

Where the person giving and the person to receive notice reside in the same place, notice must be given within the following times—

1. If given at the place of business of the person to receive notice, it must be given before the close of business hours on the day following.
2. If given at his residence, it must be given before the usual hours of rest on the day following.
3. If sent by mail, it must be deposited in the postoffice in time to reach him in usual course on the day following.

Where the person giving and the person to receive notice reside in different places, the notice must be given within the following times—

1. If sent by mail, it must be deposited in the postoffice in time to go by mail the day following the day of dishonor, or if there be no mail at a convenient hour on that day, by the next mail thereafter.
2. If given otherwise than through the postoffice, then within the time that notice would have been received in due course of mail, if it had been deposited in the postoffice within the time specified in the last subdivision.

By Mail.

Where notice of dishonor is duly addressed and deposited in the postoffice, the sender is deemed to have given due notice, notwithstanding any miscarriage in the mails.

Notice is deemed to have been deposited in the postoffice when deposited in any branch postoffice or in any letter box under the control of the postoffice department.

To Antecedent Parties.

Where a party receives notice of dishonor, he has, after the receipt of such notice, the same time for giving notice to antecedent parties that the holder has after the dishonor.

When Address Given.

Where a party has added an address to his signature, notice of dishonor must be sent to that address; but if he has not given such address, then the notice must be sent as follows—

1. Either to the postoffice nearest to his place of residence, or to the post-office where he is accustomed to receive his letters; or
2. If he live in one place, and have his place of business in another, notice may be sent to either place; or
3. If he is sojourning in another place, notice may be sent to the place where he is so sojourning.

Actually Received—Effect.

But where the notice is actually received by the party within the time specified in this act, it will be sufficient, though not sent in accordance with the requirements of this section.

Waiver.

Notice of dishonor may be waived, either before the time of giving notice has arrived, or after the omission to give due notice, and the waiver may be express or implied.

Where the waiver is embodied in the instrument itself, it is binding upon all parties; but where it is written above the signature of an indorser, it binds him only.

A waiver of protest, whether in case of a foreign bill of exchange or other negotiable instrument, is deemed to be a waiver not only of a formal protest, but also of presentment and notice of dishonor.

Dispensed with, When.

Notice of dishonor is dispensed with when, after the exercise of reasonable diligence, it cannot be given to or does not reach the parties sought to be charged.

Delay Excused.

Delay in giving notice of dishonor is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, notice must be given with reasonable diligence.

Not Required, When.

Notice of dishonor is not required to be given to the drawer in either of the following cases—

1. When the drawer and drawee are the same person;
2. Where the drawee is a fictitious person or a person not having capacity to contract;
3. When the drawer is the person to whom the instrument is presented for payment;
4. Where the drawer has no right to expect or require that the drawee or acceptor will honor the instrument;
5. Where the drawer has countermanded payment.

Notice of dishonor is not required to be given to an indorser in either of the following cases—

1. Where the drawee is a fictitious person or a person not having capacity to contract, and the indorser was aware of the fact at the time he indorsed the instrument;
2. Where the indorser is the person to whom the instrument is presented for payment;
3. Where the instrument was made or accepted for his accommodation.

Notice of Nonacceptance—Effect.

Where due notice of dishonor by nonacceptance has been given notice of a subsequent dishonor by nonpayment is not necessary, unless in the meantime the instrument has been accepted.

An omission to give notice of dishonor by nonacceptance does not prejudice the rights of a holder in due course subsequent to the omission.

Where any negotiable instrument has been dishonored it may be protested for nonacceptance or nonpayment, as the case may be; but protest is not required except in the case of foreign bills of exchange.

Instrument Discharged, When, How.

A negotiable instrument is discharged—

1. By payment in due course by or on behalf of the principal debtor;
2. By payment in due course by the party accommodated, where the instrument is made or accepted for accommodation;
3. By the intentional cancellation thereof by the holder;
4. By any other act which will discharge a simple contract for the payment of money;
5. When the principal debtor becomes the holder of the instrument at or after maturity in his own right.

A person secondarily liable on the instrument is discharged—

1. By any act which discharges the instrument;
2. By the intentional cancellation of his signature by the holder;
3. By the discharge of a prior party;
4. By a valid tender of payment made by a prior party;
5. By a release of the principal debtor, unless the holder's right of recourse against the party secondarily liable is expressly reserved;
6. By any agreement binding upon the holder to extend the time of payment, or to postpone the holder's right to enforce the instrument, unless made with the assent of the party secondarily liable, or unless the right of recourse against such party is expressly reserved.

Where the instrument is paid by a party secondarily liable thereon, it is not discharged; but the party so paying it is remitted to his former rights as regards all prior parties, and he may strike out his own and all subsequent indorsements, and again negotiate the instrument, except—

1. Where it is payable to the order of a third person, and has been paid by the drawer; and

2. Where it was made or accepted for accommodation, and has been paid by the party accommodated.

Holder may Renounce Right.

The holder may expressly renounce his rights against any party to the instrument, before, at, or after its maturity. An absolute and unconditional renunciation of his rights against the principal debtor made at or after the maturity of the instrument discharges the instrument. But a renunciation does not affect the rights of a holder in due course without notice. A renunciation must be in writing, unless the instrument is delivered up to the person primarily liable thereon.

Cancellation—Erroneous—Burden of Proof.

A cancellation made unintentionally, or under a mistake, or without the authority of the holder, is inoperative; but where an instrument or any signature thereon appears to have been canceled the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake or without authority.

Alterations, Material.

Where a negotiable instrument is materially altered without the assent of all parties liable thereon, it is avoided, except as against a party who has himself made, authorized or assented to the alteration, and subsequent indorsers. But when an instrument has been materially altered and is in the hands of a holder in due course, not a party to the alteration, he may enforce payment thereof according to its original tenor.

Any alteration which changes—

1. The date;
2. The sum payable, either for principal or interest;
3. The time or place of payment;
4. The number or the relations of the parties;
5. The medium or currency in which payment is to be made;

Or which adds a place of payment where no place of payment is specified, or any other change or addition which alters the effect of the instrument in any respect, is a material alteration.

Bill of Exchange, What is.

A bill of exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to order or to bearer.

Not an Assignment of Fund.

A bill of itself does not operate as an assignment of the funds in the hands of the drawee available for the payment thereof, and the drawee is not liable on the bill unless and until he accepts the same.

Joint Drawees.

A bill may be addressed to two or more drawees jointly, whether they are

partners or not; but not to two or more drawees in the alternative or in succession.

Inland Bill.

An inland bill of exchange is a bill which is, or on its face purports to be, both drawn and payable within this state. Any other bill is a foreign bill. Unless the contrary appears on the face of the bill, the holder may treat it as an inland bill.

May be Deemed Promissory Note, When.

Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person, or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or a promissory note.

Referee in Case of Need.

The drawer of a bill and any indorser may insert thereon the name of a person to whom the holder may resort in case of need, that is to say in case the bill is dishonored by nonacceptance or nonpayment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not as he may see fit.

Acceptance.

The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer. The acceptance must be in writing and signed by the drawee. It must not express that the drawee will perform his promise by any other means than the payment of money.

The holder of a bill presenting the same for acceptance may require that the acceptance be written on the bill and, if such request is refused, may treat the bill as dishonored.

Where an acceptance is written on a paper other than the bill itself, it does not bind the acceptor except in favor of a person to whom it is shown and who, on the faith thereof, receives the bill for value.

An unconditional promise in writing to accept a bill before it is drawn is deemed an actual acceptance in favor of every person who, upon the faith thereof, receives the bill for value.

The drawee is allowed twenty-four hours after presentment in which to decide whether or not he will accept the bill; but the acceptance if given dates as of the day of presentation.

Where a drawee to whom a bill is delivered for acceptance destroys the same, or refuses within twenty-four hours after such delivery, or within such other period as the holder may allow, to return the bill accepted or nonaccepted to the holder, he will be deemed to have accepted the same.

A bill may be accepted before it has been signed by the drawer, or while otherwise incomplete, or when it is overdue, or after it has been dishonored by a previous refusal to accept, or by nonpayment. But when a bill payable after sight is dishonored by nonacceptance and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of the first presentment.

General.

An acceptance is either general or qualified. A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn.

An acceptance to pay at a particular place is a general acceptance, unless it expressly states that the bill is to be paid there only and not elsewhere.

Qualified.

An acceptance is qualified, which is—

1. Conditional, that is to say, which makes payment by the acceptor dependent on the fulfillment of a condition therein stated;
2. Partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn;
3. Local, that is to say, an acceptance to pay **only at a particular place**;
4. Qualified as to time;
5. The acceptance of some one or more of the drawees, but not of all.

The holder may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance, he may treat the bill as dishonored by non-acceptance. Where a qualified acceptance is taken, the drawer and indorsers are discharged from liability on the bill, unless they have expressly or impliedly authorized the holder to take a qualified acceptance, or subsequently assent thereto. When the drawer or an indorser receives notice of a qualified acceptance, he must, within a reasonable time, express his dissent to the holder, or he will be deemed to have assented thereto.

Presentment for acceptance must be made—

1. Where the bill is payable after sight, or in any other case, where presentment for acceptance is necessary in order to fix the maturity of the instrument; or
2. Where the bill expressly stipulates that it shall be presented for acceptance; or
3. Where the bill is drawn payable elsewhere than at the residence or place of business of the drawee.

In no other case is presentment for acceptance necessary in order to render any party to the bill liable.

Drawer Discharged, When.

Except as herein otherwise provided, the holder of a bill which is required by the next preceding section to be presented for acceptance must either present it for acceptance or negotiate it within a reasonable time. If he fail to do so, the drawer and all indorsers are discharged.

Presentment for Acceptance Made by Whom.

Presentment for acceptance must be made by or on behalf of the holder at a reasonable hour, on a business day and before the bill is overdue, to the drawer or some person authorized to accept or refuse acceptance on his behalf; and—

1. Where a bill is addressed to two or more drawees who are not partners, presentment must be made to them all, unless one has authority to accept or refuse acceptance for all, in which case presentment may be made to him only.

2. Where the drawee is dead, presentment may be made to his personal representative;

3. Where the drawee has been adjudged a bankrupt or an insolvent or has made an assignment for the benefit of creditors, presentment may be made to him or to his trustee or assignee.

When Presented.

A bill may be presented for acceptance on any day on which negotiable instruments may be presented for payment under the provisions of sections seventy-two and eighty-five of this act. When Saturday is not otherwise a holiday, presentment for acceptance may be made before 12 o'clock, noon, on that day.

Where the holder of a bill drawn payable elsewhere than at the place of business or the residence of the drawee has not time with the exercise of reasonable diligence to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused and does not discharge the drawers and indorsers.

Presentment Excused.

Presentment for acceptance is excused and a bill may be treated as dishonored by nonacceptance, in either of the following cases—

1. Where the drawee is dead, or has absconded, or is a fictitious person, or a person not having capacity to contract by bill;

2. Where, after the exercise of reasonable diligence, presentment cannot be made;

3. Where, although presentment has been irregular, acceptance has been refused on some other ground.

Dishonored by Nonacceptance.

A bill is dishonored by nonacceptance—

1. When it is duly presented for acceptance and such an acceptance as is prescribed by this act is refused or cannot be obtained; or

2. When presentment for acceptance is excused and the bill is not accepted.

Where a bill is duly presented for acceptance, and is not accepted within the prescribed time, the person presenting it must treat the bill as dishonored by nonacceptance or he loses the right of recourse against the drawer and indorser.

When a bill is dishonored by nonacceptance, an immediate right of recourse against the drawers and indorsers accrues to the holder and no presentment for payment is necessary.

Foreign Bills Must be Protested.

Where a foreign bill appearing on its face to be such is dishonored by nonacceptance, it must be duly protested for nonacceptance, and where such a bill which has not previously been dishonored by nonacceptance is dishonored by nonpayment it must be duly protested for nonpayment. If it is not so protested, the drawer and indorsers are discharged. Where a bill does not appear on its face to be a foreign bill, protest thereof in case of dishonor is unnecessary.

The protest must be annexed to the bill, or must contain a copy thereof, and must be under the hand and seal of the notary making it, and must specify—

1. The time and place of presentment;
2. The fact that presentment was made and the manner thereof;
3. The cause or reason for protesting the bill;
4. The demand made and the answer given, if any, or the fact that the drawee or acceptor could not be found.

By Whom.

Protest may be made by—

1. A notary public; or
2. By any respectable [responsible] resident of the place where the bill is dishonored, in the presence of two or more credible witnesses.

When.

When a bill is protested, such protest must be made on the day of its dishonor, unless delay is excused as herein provided. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting.

Where.

A bill must be protested at the place where it is dishonored, except that when a bill drawn payable at the place of business, or residence, of some person other than the drawee, has been dishonored by nonacceptance, it must be protested for nonpayment at the place where it is expressed to be payable, and on further presentment for payment to, or demand on, the drawee is necessary.

A bill which has been protested for nonacceptance may be subsequently protested for nonpayment.

Bankruptcy, Effect of.

Where the acceptor has been adjudged a bankrupt or an insolvent or has made an assignment for the benefit of creditors, before the bill matures, the holder may cause the bill to be protested for better security against the drawer and indorsers.

Dispensed With, When.

Protest is dispensed with by any circumstances which would dispense with notice of dishonor. Delay in noting or protesting is excused when delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate, the bill must be noted or protested with reasonable diligence.

Copy may be Used When.

Where a bill is lost or destroyed or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof.

Acceptance for Honor.

Where a bill of exchange has been protested for dishonor by nonacceptance or protested for better security and is not overdue, any person not being a party already liable thereon may, with the consent of the holder, intervene and accept the bill supra protest for the honor of any party liable thereon or for the

honor of the person for whose account the bill is drawn. The acceptance for honor may be for part only of the sum for which the bill is drawn; and where there has been an acceptance for honor for one party, there may be a further acceptance by a different person for the honor of another party.

How Made.

An acceptance for honor supra protest must be in writing and indicate that it is an acceptance for honor, and must be signed by the acceptor for honor.

For Whose Honor Made.

Where an acceptance for honor does not expressly state for whose honor it is made, it is deemed to be an acceptance for the honor of the drawer.

Liability of Acceptor for Honor.

The acceptor for honor is liable to the holder and to all parties to the bill subsequent to the party for whose honor he has accepted.

The acceptor for honor by such acceptance engages that he will on due presentment pay the bill according to the terms of his acceptance: Provided, It shall not have been paid by the drawee: And provided also, That it shall have been duly presented for payment and protested for nonpayment and notice of dishonor given to him.

Maturity of.

Where a bill payable after sight is accepted for honor, its maturity is calculated from the date of the noting for nonacceptance and not from the date of the acceptance for honor.

Must be Protested for Nonpayment, When.

Where a dishonored bill has been accepted for honor supra protest or contains a reference in case of need, it must be protested for nonpayment before it is presented for payment to the acceptor for honor or referee in case of need.

Presentment for Payment for Honor.

Presentment for payment to the acceptor for honor must be made as follows:

1. If it is to be presented in the place where the protest for nonpayment was made, it must be presented not later than the day following its maturity.

2. If it is to [be] presented in some other place than the place where it was protested, then it must be forwarded within the time specified in section one hundred and four.

The provisions of section eighty-one apply where there is delay in making presentment to the acceptor for honor or referee in case of need.

When the bill is dishonored by the acceptor for honor it must be protested for nonpayment by him.

Payment for Honor.

Where a bill has been protested for nonpayment, any person may intervene and pay it supra protest for the honor of any person liable thereon or for the honor of the person for whose account it was drawn.

The payment for honor supra protest in order to operate as such and not as a mere voluntary payment must be attested by a notarial act of honor, which may be appended to the protest or form an extension to it.

The notarial act of honor must be founded on a declaration made by the payor for honor, or by his agent in that behalf, declaring his intention to pay the bill for honor and for whose honor he pays.

Where two or more persons offer to pay a bill for the honor of different parties, the person whose payment will discharge most parties to the bill is to be given the preference.

Where a bill has been paid for honor, all parties subsequent to the party for whose honor it is paid are discharged, but the payor for honor is subrogated for, and succeeds to, both the rights and duties of the holder as regards the party for whose honor he pays and all parties liable to the latter.

Where the holder of a bill refuses to receive payment supra protest, he loses his right of recourse against any party who would have been discharged by such payment.

The payor for honor, on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonor, is entitled to receive both the bill itself and the protest.

Bills in Set.

Where a bill is drawn in a set, each part of the set being numbered and containing a reference to the other parts, the whole of the parts constitutes one bill.

Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is as between such holders the true owner of the bill. But nothing in this section affects the rights of a person who in due course accepts or pays the part first presented to him.

Where the holder of a set indorses two or more parts to different persons, he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed, as if such parts were separate bills.

The acceptance may be written on any part and it must be written on one part only. If the drawee accepts more than one part, and such accepted parts are negotiated to different holders in due course, he is liable on every such part as if it were a separate bill.

When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereon.

Except as herein otherwise provided where any one part of a bill drawn in a set is discharged by payment or otherwise the whole bill is discharged.

Promissory Notes and Checks.

A negotiable promissory note within the meaning of this act is an unconditional promise in writing made by one person to another signed by the maker engaging to pay on demand, or at a fixed or determinable future time, a sum

certain in money to order or to bearer. Where a note is drawn to the maker's own order, it is not complete until indorsed by him.

A check is a bill of exchange drawn on a bank, payable on demand. Except as herein otherwise provided, the provisions of this act applicable to a bill of exchange payable on demand apply to a check.

A check must be presented for payment within a reasonable time after its issue or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay.

Where a check is certified by the bank on which it is drawn, the certification is equivalent to an acceptance.

Where the holder of a check procures it to be accepted or certified, the drawer and all indorsers are discharged from liability thereon.

A check of itself does not operate as an assignment of any part of the funds to the credit of the drawer with the bank, and the bank is not liable to the holder unless and until it accepts or certifies the check.

General Provisions—Definitions.

This act shall be known as the negotiable instruments act.

In this act unless the context otherwise requires—

“Acceptance” means an acceptance completed by delivery or notification.

“Action” includes counterclaim and setoff.

“Bank” includes any person or association of persons carrying on the business of banking, whether incorporated or not.

“Bearer” means the person in possession of a bill or note which is payable to bearer.

“Bill” means bill of exchange, and “note” means negotiable promissory note.

“Delivery” means transfer of possession, actual or constructive, from one person to another.

“Holder” means the payee or indorsee of a bill or note, who is in possession of it, or the bearer thereof.

“Indorsement” means an indorsement completed by delivery.

“Instrument” means negotiable instrument.

“Issue” means the first delivery of the instrument, complete in form, to a person who takes it as a holder.

“Person” includes a body of persons, whether incorporated or not.

“Value” means valuable consideration.

“Written” includes printed, and “writing” includes print.

The person “primarily” liable on an instrument is the person who by the terms of the instrument is absolutely required to pay same. All other parties are “secondarily” liable.

In determining what is a “reasonable time” or an “unreasonable time,” regard is to be had to the nature of the instrument, the usage of trade or business, if any, with respect to such instruments, and the facts of the particular case.

Where the day, or the last day, for doing any act herein required or permitted to be done falls on Sunday or on a holiday, the act may be done on the next succeeding secular or business day.

Not Retroactive.

The provisions of this act do not apply to negotiable instruments made and delivered prior to the passage thereof.

In any case not provided for in this act the rules of the law-merchant shall govern.

All acts and parts of acts inconsistent with the provisions of this act are hereby repealed. [Approved Mar. 3, 1899; L. 1899, p. 340.]

Code of negotiable instruments of March 3, 1899, page 350, section 57.—Bad faith on the part of the purchaser of a promissory note against which the maker had a valid defense is not shown by evidence that it was purchased at a heavy discount, without inquiry of the maker, whom the purchaser knew to be perfectly solvent, when it appears that inquiry was made of the payee as to the consideration for the note; that the payee was in need of money; that the note, though held at the time in this state, was payable at Cape Nome, Alaska, of whose inaccessibility for half the year the court would take judicial notice; and that the note was purchased three months before maturity without notice of any infirmity in the instrument: *McNamara v. Jose*, 28 Wash. 461, 68 Pac. 903.

Under Laws 1899, page 350, section 57, which provides that the holder of a negotiable instrument may enforce payment for the full amount against all parties liable thereon, recovery upon a promissory note by the purchaser thereof is not limited to the amount paid for the note: *Id.*

A promissory note agreeing to pay the person therein named a specified sum absolutely and at all events four years after a certain date, or before, is negotiable, although it contains the provision that "if we sell or remove the timber that we have bought on said Johan Joergenson's

[payee] homestead claim, before the expiration of said four years, then this note shall be paid at the times of such sale or removal of said timber," since such provision does not change or destroy the maker's absolute liability to pay at the time designated; nor would the fact of the note's becoming payable prior to the time of absolute payment, upon the happening of a certain event, affect its negotiability: *Joergensen v. Joergensen*, 28 Wash. 477, 92 Am. St. Rep. 888, 68 Pac. 913.

§ 3655. **Grace, days of.**—Under Ballinger's Code, section 3655, allowing three days' grace upon negotiable promissory notes, action upon such instrument cannot be maintained before the expiration of the last day of grace, and hence the bar of the statute of limitations will not begin running until the expiration of the period of grace: *Joergenson v. Joergenson*, 28 Wash. 477, 72 Am. St. Rep. 888, 68 Pac. 913.

§ 3665. **Payment of obligations in lawful money, provision for held void.**—The act of March 11, 1897 (Laws 1897, p. 91), relating to the payment of obligations and providing that they may be satisfied with any kind of lawful money or currency of the United States, is void as an attempt to legislate upon a matter falling exclusively within federal jurisdiction: *Dennis v. Moses*, 18 Wash. 538, 52 Pac. 333.

§ 3668. Interest in Absence of Agreement.

Every loan or forbearance of money, goods, or thing in action shall bear interest at the rate of six per centum per annum where no different rate is agreed to in writing between the parties. The discounting of commercial paper, where the borrower makes himself liable as maker, guarantor or indorser, shall be considered as a loan for the purposes of this act.

§ 3668. **Interest begins to accrue when.** Interest at the legal rate begins to run on an open account for services rendered from the date of full performance, at which time the right to compensation fully accrued: *Happy v. Prickett*, 24 Wash. 290, 64 Pac. 528.

Laws of another state.—Refusal to permit plaintiffs to prove the statute of Montana showing the rate of interest allowable on contracts was not error, when the rate contracted for was lawful under the laws of this state, and therefore presumptively lawful under the laws of the place where made; and the fact that they had alleged the lawfulness of the rate under the laws of Montana, which had been an-

swered by a general denial, would not raise a material issue which it would be incumbent upon plaintiffs to sustain by proof: *Clark v. Eltinge*, 29 Wash. 215, 69 Pac. 736.

Interest — Antecedent contracts.—The provision in the interest laws of 1895 and 1899 (Laws 1895, p. 350, § 6; Laws 1899, p. 130, § 8) that nothing therein contained should be construed as affecting any contract or obligation made or entered into prior to the taking effect of the act, applies only to contracts and obligations between parties, and not to rights or obligations arising by operation of law: *Palmer v. Laberee*, 23 Wash. 410, 63 Pac. 216.

§ 3669. Maximum Rate.

Any rate of interest not exceeding twelve (12) per centum per annum agreed to in writing by the parties to the contract, shall be legal, and no person shall directly or indirectly take or receive in money, goods or thing in action, or in any other way, any greater interest, sum or value for the loan or forbearance of any money, goods or thing in action than twelve (12) per centum per annum.

§ 3670. State Warrants.

All state warrants shall bear interest at a rate not greater than five (5) per centum per annum, unless a less rate be specified therein, and shall be paid by the treasurer in the order of their number date and issue and shall cease to draw interest at the expiration of ten days from and after the date of the first publication of any call made by the treasurer for the payment of warrants.

State warrants draw interest only from the date of their presentation to the treasurer and his indorsement thereon, "Not paid for want of funds," at the le-

gal rate prevailing at the date of presentation and not that in force at the date of issuance, under the statutes of this state: State v. Young, 22 Wash. 273, 60 Pac. 650.

§ 3670a. Municipal Warrants.

All county, city, town and school warrants, and all warrants or other evidences of indebtedness, drawn upon or payable from any public funds, shall bear interest at a rate not greater than eight per centum per annum, unless a less rate be specified therein.

§ 3670b. Issuing Officer to Regulate Rate of Interest.

It shall be the duty of every public officer issuing public warrants to make monthly investigation to ascertain the market value of the current warrants issued by him, and he shall, so far as practicable, fix the rate of interest (not in any event, however, exceeding the maximum rate hereinbefore established therefor) on the warrants issued by him during the ensuing month so that the par value shall be the market value thereof.

§ 3670c. Judgments.

Judgments hereafter rendered founded on written contracts, providing for the payment of interest until paid at a specified rate, shall bear interest at the rate specified in such contracts, not in any case, however, to exceed ten per cent per annum: Provided, That said interest rate is set forth in the judgment; and all other judgments shall bear interest at the rate of six per centum per annum from date of entry thereof.

§ 3671. Usury.

If a greater rate of interest than is hereinbefore allowed shall be contracted for or received or reserved, the contract shall not, therefore, be void; but if in any action on such contract proof be made that greater rate of interest has been directly or indirectly contracted for or taken or reserved, the plaintiff

shall only recover the principal, less the amount of interest accruing thereon at the rate contracted for, and the defendant shall recover costs; and if interest shall have been paid, judgment shall be for the principal less twice the amount of the interest paid, and less the amount of all accrued and unpaid interest; And the acts and dealings of an agent in loaning money shall bind the principal, and in all cases where there is illegal interest contracted for by the transaction of any agent the principal shall be held thereby to the same extent as though he had acted in person. And where the same person acts as agent of the borrower and lender, he shall be deemed the agent of the lender for the purposes of this act.

§ 3671. City warrants—Interest on.—Under section 3 of the act of March 20, 1895, providing that all state warrants shall draw interest at a rate not greater than eight per centum per annum, unless a less rate be specified therein, the state treasurer must pay eight per centum on state warrants issued subsequent to the

passage of the act, and which contain no provision as to the rate of interest, although another section of the same act provides that the legal rate shall be seven per cent as to private contracts, where no different rate is agreed to in writing: *Spo- kane & Eastern Trust Co. v. Young*, 19 Wash. 122, 52 Pac. 1010.

§ 3672. Not Retroactive as to Judgments.

Nothing herein contained shall be construed as affecting previous to entry of judgment thereon any contract or obligation made or entered into prior to the taking effect of this act.

§ 3672a. Repeal.

The act of the legislature entitled "An act to establish the legal rate of interest in the state of Washington, and to prevent usury," approved March 20th, 1895, is hereby repealed: Provided, however, That the repeal thereof shall not affect any existing contract. [Approved Mar. 13, 1899; L. 1899, p. 128.]

§ 3677. Improvement of Highways—Diking Districts—Election to Establish.

Said election shall be held on the day designated in such notice, and shall be conducted in accordance with the general election laws of the state of Washington, and no person shall be entitled to vote at such election unless he shall be a qualified elector of the county in which such district is located, and shall have resided within the boundaries of said proposed district for a period of not less than thirty days next preceding the day of such election. The board of county commissioners shall, on the Monday next succeeding such election, count and canvass the votes cast thereat, and if, upon said canvass and count, it appears that a majority of the votes cast are for "dike districts, yes," the board shall immediately enter an order upon its records declaring the proposed territory duly organized as a dike district, giving to such district a proper number, followed by the name of the county and state, and shall also declare the three persons receiving, respectively, the highest number of votes, the duly elected dike commissioners of such diking district. Said board shall cause a copy of the order entered of record, duly certified to be filed in the office of the secretary of state, and from and after the date of such filing, said organization shall be

deemed complete; and the members of said board of commissioners, so chosen at said election, before entering upon the discharge of their duties, shall qualify as county officers are required to qualify, and each shall enter into a bond, payable to the state of Washington, for the benefit of said district, with two or more sureties, in a penal sum of not less than one thousand dollars nor more than five thousand dollars, conditioned for the faithful performance of their duties as dike commissioners, to be approved by the board of county commissioners; and to be filed with the county clerk, of the county in which said district is situated. The said dike commissioners shall hold office until the next general election at which officers of said dike district are to be elected, and until such further time as their successors are elected and qualified. The members of each successive board of dike commissioners, whether elected or appointed, shall, before entering upon their duties, enter into a bond as herein provided, and after being approved by the board of county commissioners, shall be filed in the office of the county clerk of the county in which said district is situated. [Amendment, approved Mar. 13, 1899; L. 1899, p. 187.]

§ 3685. Appeals—Omission of Benefited Lands.

If the board of diking commissioners shall, at any time, discover that any lands within said district are being benefited by the diking system and the same were by mistake, inadvertence or other cause omitted from the assessment of benefits as provided for in the last preceding section, or which were omitted for the reason that they were not at the time of assessing the benefits as provided for in said preceding section, for any cause, subject to a legal assessment, said commissioners shall file a petition in the superior court in the original cause setting forth the fact of such benefits, describing the lands omitted, the reason the same were omitted in said original proceedings and giving the name of the owners or reputed owners thereof and praying that said original cause, as to such lands, be opened up for further proceedings for the assessment of the alleged benefits, and upon the filing of said petition summons shall issue thereon and be served on the defendants named in said petition the same as summons is served and issued in original proceedings, as near as may be, except the court may, to avoid costs, and in its discretion, call a jury of not less than three jurors, and the jury, in assessing the benefits, shall take into consideration the length of time said lands are to receive the benefits from said improvement and its future maintenance, estimating said time from the date when said lands first became legally assessable, which date must be found by the jury in their verdict as to each tract or parcel found to be benefited: And provided further, That in case the expense and costs of the improvement have been paid for by assessments levied against the lands assessed in the original proceeding before the lands provided for in this section are assessed, as provided for herein, then, in such case, the assessments levied from time to time on said last mentioned land shall be paid into the maintenance fund of said district. Every person or corporation feeling himself or itself aggrieved by any judgment for damages or any assessment of benefits provided in this act, may appeal to the supreme court of the state within thirty days after the entry of the judgment,

and such appeal shall bring before the supreme court the propriety and justness of the amount of damage or assessment of benefit in respect to the parties to the appeal. Upon such appeal no bonds shall be required and no stay shall be allowed. [Amendment, approved Mar. 16, 1901; L. 1901, p. 226.]

§ 3727. Lands Omitted from Assessments—Appeals.

If the board of drainage commissioners shall, at any time, discover that any lands within said district are being benefited by the drainage system, and the same were by mistake, inadvertence or other cause omitted from the assessment of benefits as provided for in the last preceding section, or which were omitted for the reason that they were not at the time of assessing the benefits provided for in said preceding section, for any cause, subject to a legal assessment, said commissioners shall file a petition in the superior court in the original cause setting forth the facts of such benefits, describing the lands omitted, the reason the same were omitted in said original proceedings and giving the names of the owners or reputed owners thereof and praying that said original cause, as to such lands, be opened up for further proceedings for the assessment of the alleged benefits, and upon the filing of said petition summons shall issue thereon and be served on the defendants named in said petition the same as summons is served and issued in original proceedings, as near as may be, except the court may, to avoid costs and in its discretion, call a jury of not less than three jurors; and the jury, in assessing the benefits, shall take into consideration the length of time said lands are to receive the benefits from said improvement and its future maintenance, estimating said time from the date when said lands first became legally assessable, which date must be found by the jury in their verdict as to each tract or parcel found to be benefited: And provided further, That in case the expense and the cost of the improvements has been paid for by assessments levied against the land assessed in the original proceedings before the lands provided for in this section are assessed, as provided for herein, then, in such case, the assessments levied from time to time on said last mentioned land shall be paid into the maintenance fund of said district. Every person or corporation feeling himself or itself aggrieved by any judgment for damages or any assessment of benefits provided in this act, may appeal to the supreme court of the state within thirty days after the entry of the judgment, and such appeal shall bring before the supreme court the propriety and justness of the amount of damage or assessment of benefits in respect to the parties to the appeal. Upon such appeal no bonds shall be required and no stay shall be allowed. [Amendment, approved Mar. 16, 1901; L. 1901, p. 181.]

§ 3747a. Providing for the Manner of Paying Warrants Issued for Drains and Ditches, etc., in Drainage Districts.

That all warrants drawn and issued by order of the county commissioners of any county in this state, under an act entitled "An act providing for the construction, repairing and protection of drains and ditches for agricultural, sanitary and domestic purposes, and to provide for the organization of drainage

districts, and declaring an emergency," approved March 19, 1890, shall be paid in the manner specified and directed in sections 2 and 3 of this act.

Whenever assessments have been made or shall hereafter be made, under the provisions of an act of the legislature of this state entitled "An act providing for the payment of expenses incurred in compliance with an act entitled 'An act to provide for the construction, repairing and protection of drains and ditches for agricultural, sanitary and domestic purposes, and to provide for the organization of drainage districts, and declaring an emergency,' approved March 19, 1890, and declaring an emergency," approved March 19, 1895, and the assessments realized are inadequate and insufficient, after deducting therefrom the amount of bonds issued for damages for rights of way to pay said warrants heretofore issued under the act of March 19, 1890, hereinbefore mentioned, the same shall be paid in the proportion which the whole number of warrants issued under said act of March 19, 1890, bears to the assessment realized and available for the payment of said warrants, regardless of the number, or order of issue.

Whereas, much uncertainty exists as to the order of payment of said bonds and warrants issued under the provisions of the said act of March 19, 1895, and warrants issued under the void act of March 19, 1890, an emergency is hereby declared, and this act shall be in force from and after its passage and approval. [Filed without approval, Mar. 20, 1903; L. 1903, p. 390.]

§ 3753. Natural Watercourses, Improvement of.

The whole or any portion of any natural watercourse, the whole or any portion of which lies within any district established under this chapter, or the whole or any portion of any ditch or drainage system already constructed or partially constructed prior to the passage of this chapter, may be improved and completed as a system under the provisions of this chapter. Provided, That vested rights in any such watercourse acquired by appropriation of the water thereof for irrigation, mining or manufacturing purposes under existing law, shall not be disturbed. [Amendment, approved Mar. 6, 1903; L. 1903, p. 42.]

§ 3754a. Of Drainage Districts—Organization.

Whenever one or more persons whose land will be benefited thereby shall desire to have a ditch, drain or water course located, constructed, straightened, widened, altered or deepened, and they shall not desire to be incorporated as a drainage district, or there shall not be a sufficient number to be benefited by such ditch to form such a drainage district, proceedings for the construction of such ditch or drain shall be as provided for in this act.

Definition—Petition.

The word "ditch" as used in this act shall be held to include a drain or watercourse. The petition for any such improvement shall be held to include any side, lateral, spur or branch ditch, drain or water course necessary to secure the object of the improvement whether the same is mentioned therein or not. But no improvement shall be located unless a sufficient outlet is provided.

Apportionment to Railways and Highways.

When the improvements will drain the whole or a part of any public or corporate road or railroad or will so benefit such road that the traveled track or roadbed thereof will be improved by its construction, there shall be apportioned to the county, if the road is a state, county or free turnpike road, or to the corporation if a corporate road or railroad, a proper share of the costs and expense thereof as hereinafter provided.

Application, Made to Whom.

Application for any such improvement shall be made to the commissioners of the county, signed by one or more owners of lots or lands which will be benefited thereby.

Petition and Bond to be Filed.

The petition shall be filed with the clerk of the board of county commissioners and shall set forth the necessity of the improvement, and describe the route and termini thereof, and there shall be filed therewith a bond, payable to the county, with at least two good and sufficient sureties, in not less than two hundred dollars, conditioned for the payment of all costs if the prayer of the petition be not granted, or dismissed for any cause by the board of county commissioners.

Survey.

If the bond be approved by the board of county commissioners, the clerk of the board shall deliver a copy of said petition to the county surveyor, who shall at once proceed to view the line of the proposed improvement and determine by actual view of the premises along and adjacent thereto whether the improvement is necessary, or will be conducive to public health, convenience or welfare, or whether the line described is the best route, and he shall report his findings in writing to the board of county commissioners, and the clerk shall enter said report upon the journal of the board.

Adverse Report—Costs.

If the report of the county surveyor shall be against the improvement, upon the adoption of the report by the board the petition shall be dismissed at the cost of the petitioners and they shall cause an itemized bill of all the costs to be made up by the clerk for their examination and approval, which shall include the per diem of the county surveyor, together with all other costs necessarily made, except the fees of the clerk and the compensation of the county commissioners.

Favorable Report—Resurvey.

If the report of the county surveyor shall be for said improvement, the commissioners shall cause to be entered on their journal an order directing the county surveyor to go upon the line described in the petition, or as changed by them, and survey and level the same and set a stake at every hundred feet, numbering down stream; note the intersection of lines and boundaries of lands, township and county lines, land marks and road crossings, and make a report, profile and plat of the same.

Schedule of Damages and Benefits.

The commissioners shall also by their order direct the county surveyor to make and return a schedule of all the lots and lands and public or corporate roads or railroads that will be benefited by the improvement, and shall make an estimate of the total number of acres to be improved by the construction of said ditch, and the specification of the manner in which the improvement is to be made and completed, the damages that will accrue to each piece of land by reason of said improvement, the number of floodgates, waterways, farm crossings and bridges necessary, including kind and dimensions thereof, and of all county and district lines and railroad crossings.

Scale and Form of Plat.

The plat provided for in section 8 of this act shall be drawn upon a scale sufficiently large to represent all the meanderings of the proposed improvement, and shall distinctly show the boundaries of each lot or tract of land, and of each road or railroad to be benefited thereby, the name of the owner of each lot or tract of land, as the same appears upon the records of the county, the authority or company having in charge or owning or controlling each public or corporate road or railroad, the distance in feet through each tract or parcel of land, together with such other matters as the county surveyor shall deem material. The profile shall show the surface, the grade line and the gradient fixed, and the county surveyor shall make and file with his report an itemized bill of the costs made in the proper discharge of his duties under this and the previous sections and shall report the same to the clerk of the board of county commissioners within ten days after the completion of the survey and level.

Day for Hearing and Notice.

Upon the filing of the report of the county surveyor the board of county commissioners shall immediately fix a day for the hearing of such report, and shall direct the sheriff of the county to notify each person affected or to be affected by such improvement, of the day set for hearing by serving a written notice upon such persons, if they can be found in the county, and if they cannot be found in the county, then by leaving said notice at their residence, if known, and if not known then the clerk of the board shall publish such notice for two successive issues in the official newspaper of the county, which said notice shall describe the route of the ditch.

Hearing Before Commissioners.

On the day set for hearing such report the board of county commissioners shall meet at their office and shall first ascertain if the notice required by the preceding section has been duly given. If they find that due notice has been given they shall proceed to the hearing of the report of the county surveyor. If at the hearing of the report it shall appear that all the provisions of this law have been observed, and that the damages estimated in the said report have been accepted in writing by all the parties, or if any one shall object to the damages allowed by the county surveyor and shall submit such claim for damages as he shall think just and the board shall have allowed such claim for damages

and the amount of damages having been fully determined, then the board shall proceed with the construction of the ditch as hereinafter set forth.

Damages Paid by County.

Upon the settlement of claims for damages the clerk of the board shall draw his warrant upon the treasurer for the amount of damages settled upon.

If Report of Damage not Assented to, Suit to Determine Same Instituted.

If at such hearing as provided for in section 12 of this act, it shall appear to the board that anyone affected by the ditch has not signified his acceptance of the report of the county surveyor as to damages, or if the board shall deem the claim of anyone for damages excessive they shall direct the county attorney to at once institute proceedings in the superior court of the county in which said ditch is located for the determination of the damages anyone may have sustained, and for the approval of the report of the county surveyor as to damages, and shall direct the clerk of the board to furnish the attorney with a certified copy of all the proceedings had in such matters.

The trial shall be by jury, unless waived by the parties, and the proceedings shall be the same as provided for the trial of other civil cases.

The jury shall find and return a verdict determining the following matters: Whether the amount of damages allowed by the county surveyor is just, and if they deem it not just they shall allow such damages as they deem just: Provided, That the jury shall take into consideration the benefit that said ditch will be to the land through which it runs or drains, in awarding damages.

Upon the return of the verdict the same shall be recorded and a certified copy of the verdict and the order of the court shall be transmitted to the clerk of the board of county commissioners, whereupon the board shall order the treasurer to pay into court the amount of damages obtained in such trial, from any moneys he shall have on hand under control of the commissioners.

When Damages Determined, Proceedings.

Upon the determination of all the damages and the payment thereof, the board of county commissioners shall proceed to appoint a ditch supervisor, who shall be a resident of said drainage district, and who shall hold office for one year, or until a successor is appointed, and who shall give bonds to be fixed and approved by the county commissioners. The said supervisors shall thereupon begin the construction of said ditch at the outlet of the same, and shall construct said ditch under the direction of the county surveyor who located the same.

Construction of Ditch.

The supervisor shall employ such number of men as shall be necessary to successfully carry on the work of such construction, and shall give preference in such employment to the persons owning the land to be benefited by the improvement.

Compensation of Supervisor.

The compensation of the ditch supervisor and the men employed upon the improvement shall be fixed by the board of county commissioners, and shall

be paid for by warrants upon the county treasurer drawn upon the reports sworn to by the supervisor in charge of such work, which said warrants shall not draw interest until the assessments hereinafter provided shall become delinquent.

Statement of Costs.

When the improvement is fully completed and accepted by the county surveyor and the board of county commissioners, the clerk shall make a statement of the total costs of the construction of the ditch, including the cost of location and survey, costs of proceedings in court, the supervision of the county surveyor, damages paid and the cost of the work of construction, and shall present the same to the board of county commissioners for examination.

Apportionment.

If the board find the statement of the costs correct they shall immediately order the county surveyor to apportion such costs to the lands benefited, and direct the county surveyor to report such apportionment to the board as soon as the same shall be completed, whereupon the notice of the filing of such apportionment and the time for the hearing of the same shall be given to all parties in the same manner as notice is required to be given in section 11 of this act, and at said hearing any party interested may file in writing any objections of any character to said apportionment, and the board may modify, reapportion or change in any way said report, but when all the apportionments shall appear fair and just and equitable the board shall enter an order confirming the same and all the proceedings leading up to said apportionment. And said board shall at said hearing determine at what time and in what number of assessments, they will require the same to be paid, and order that the assessments as finally determined be placed upon the tax rolls for the year in which the first assessment is to be paid, against the lots or lands assessed. The treasurer shall collect such assessment in the same manner and at the same time as other taxes are collected, and if such assessments are not paid when due they shall become delinquent, be liable to the same penalty and bear the same interest and be collectible in the same manner as are other taxes assessed against said lots or tracts of land, and the treasurer shall not have authority to receive a portion of the taxes assessed against any piece of land in any one year unless he collect the full amount assessed against the lot or tract of land, including the ditch assessment, nor shall he cancel any assessment or allow any rebate except upon order of the board of county commissioners. The receipt for the payment of such ditch assessments shall be included in the receipt for the payment of other taxes for the same year.

Assessments.

If the county commissioners determine that the cost of the construction of said ditch shall be paid by two or more assessments, they shall make an order directing the officer who extends the taxes to extend the assessment for each year upon the tax rolls until all the assessments have been levied. When the assessments are paid the treasurer shall pay the same into the fund against

which the warrants were drawn until all the costs paid out of such fund in the construction of the ditch shall have been repaid.

Record by Clerk.

The clerk of the board shall keep a special record in which he shall record the proceedings had in the construction of each ditch or improvement constructed under the provisions of this act.

State Lands Assessed, When Benefited.

All state, school, granted or other lands shall be included within the provisions of this act, and whenever any such land will be benefited by such improvement they shall be included in the apportionment of the costs of the improvement. When an assessment is made against any such land for such improvement it shall be assessed according to subdivision thereof and said land shall be placed upon the tax-rolls the same as other land. Should said state land not be sold by the state before said assessment becomes delinquent then the county commissioners shall direct the payment of said tax out of the general revenue fund of the county, and on the tax-rolls shall be entered opposite said tax the words "charged to county revenue fund." The valuation of said state land benefited by said improvement shall not be raised by or on account of said improvement, but when any of such land is offered for sale there shall be added to the appraised value for such lands as provided for by law the amount of such payments made by the county out of the general fund, which amount so added shall be paid by the purchaser in cash at the time of the sale of said land in addition to the amount due to the state for said land, and such additional sum shall be received by the county treasurer and placed to the credit of the general county fund.

Penalty for Neglect of Duty Hereunder.

If the county surveyor or the clerk of the board of county commissioners, or any other officer named in this act, neglect or refuse to perform any duty imposed upon him by the provisions of this act, he shall forfeit and pay a fine of twenty-five dollars for every such neglect, to be recovered before any officer having competent jurisdiction in the name of the state, for the benefit of the common schools of the county at the suit of any person aggrieved thereby.

Vacation—Abandonment.

The county commissioners may, upon the proper petition and bond being filed and notice having been given for one month, declare any ditch whether located by the county commissioners or others, vacated and abandoned, and its location and establishment to be held for naught, if, in their judgment, the same has ceased to be of public utility and the public convenience or welfare no longer demand the maintenance thereof. But private rights of persons acquired by reason of the location and establishment of such ditch shall not be interfered with nor in any way impaired thereby.

Prior Constructed Ditches Validated.

Any ditch which has been constructed under the provisions of any other act relating to the construction of ditches, and which has been in use for a

period of three years or more without obstruction or [interruption], and the same shall be necessary to public health, welfare or convenience, shall become a legal ditch upon the passage of this act, and be subject to the provisions of this act affecting such improvements.

Apportionment to County, How Paid.

The county commissioners may apportion a sum sufficient from the general county fund to pay for the location and construction of such portions of the respective ditches as may be apportioned to the county or upon land owned by the county.

Natural Watercourses Improved Hereunder.

Any natural watercourse may be improved by the board of county commissioners in accordance with the provisions of this chapter, subject to vested rights of land, lots, mill or mine owners, along such watercourse.

Duty of County Attorneys.

It shall be the duty of the county attorney of each county to prepare suitable blanks for the use of the board of county commissioners under this chapter.

Penalty for Obstructing.

Whoever willfully obstructs any ditch, or willfully diverts the water from its proper channel, shall forfeit and pay to the county, for the benefit of the ditch so obstructed, the sum of fifty dollars, to be recovered before a justice of the peace or other court having jurisdiction of the matter, in the name of the state, and shall be liable for all damages that accrue to any person or corporation by said act.

Maintenance.

It shall be the duty of the county commissioners to keep the ditches within their counties, whether constructed under the provisions of this act, or under the provisions of any laws heretofore enacted, free and clear of all obstructions, and, upon complaint of any person, shall immediately remove any obstruction which interferes with the flow of the water through said ditch.

Taxes to Pay for Maintenance.

At the same time that the levy for the general county revenue is made, the board of county commissioners shall levy a special tax to pay all expenses incurred in keeping any ditch or ditches in repair, which said tax shall be levied upon all lands benefited by the ditch in the same proportion as the apportionment made for the construction of the ditch, which said taxes shall be extended upon the tax-rolls and be collectible as other taxes, and when paid shall be placed to the credit of the ditch fund to be paid out by warrants drawn upon said fund in payment for work performed in keeping said ditch or ditches in repair.

Private Ways of Necessity.

The same proceedings may be had for the establishment of a ditch as a private way of necessity, as provided in this act, except that the bond required

by section 5 of this act shall be conditioned for the payment of all costs of establishment, location and damages paid, or for the costs incurred if the petition is dismissed. After the ditch has been established the county shall be relieved of further proceedings in the matter, and the ditch shall be constructed by and at the expense of the persons to be benefited by the same.

Ditches Located in More than One County.

When a ditch or improvement is proposed which will require a location in more than one county, application shall be made to the commissioners of each of said counties, and the county surveyor shall make reports for their respective counties. The line of the ditch shall be examined by the county surveyors of the counties wherein said ditch will lie, jointly. The hearing provided for by sections 11 and 12 of this act shall be had by the boards of the counties wherein the ditch will lie, in joint session, at the county seat nearest the line of the ditch. The county surveyor of the county wherein the greatest length of the ditch will lie shall have charge of the construction of the ditch.

Nothing in this act shall be construed to repeal or in any wise unsettle the law on page 271 of the Session Laws of 1895, entitled "An act to provide for the establishment and creation of drainage districts and the construction and maintenance of a system of drainage and to provide for the means of payment thereof and declaring an emergency," approved March 20, 1895. [Approved Mar. 8, 1901; L. 1901, p. 106.]

This act was held constitutional in *Lewis County v. Gordon*, 20 Wash. 80, 54 Pac. 779, wherein it is said the legislature may properly authorize payment in condemnation proceedings of expenses incurred in prior proceedings under a statute which was declared unconstitutional after such expenditures were made.

An act providing "for the construc-

tion, repairing and protection of drains and ditches for agricultural, sanitary and domestic purposes, and to provide for the organization of drainage districts," is general, and not special, legislation. The construction of ditches for drainage of land otherwise useless for agricultural purposes is recognized as a public use.

§ 3754b. Private Ditches—Location and Establishment of.

The owner or owners of any land which requires drainage and which is so situated that it is necessary to the proper drainage of the same to construct ditches or drains across the lands of others, may obtain the location and establishment of such ditch or drain across such lands, in the manner provided in this act.

Petition for.

The person or persons desiring the location and establishment of such ditch or drain may file in the superior court of the county in which the lands sought to be appropriated are situated, a petition showing the name of the petitioner or petitioners; a description of the lands to [be] benefited, and of those over which the ditch would pass, and setting forth the name of every owner, encumbrancer, or other person or party interested in the lands over which said ditch would pass, or any part thereof, so far as the same can be ascertained from the public records of the county. Such petition shall also show the object for which the lands are sought to be appropriated, the necessity for

the appropriation, and the length, width and depth of the ditch on the lands of each separate owner, with a description of said ditch, as nearly as practicable; and shall also set out the estimated damage to the lands of each owner to be crossed by such ditch.

Bond.

The petitioner, or someone in his behalf, shall enter into a bond in the penal sum of one hundred dollars, with two or more sureties, to be approved by the clerk of said court, payable to the state of Washington, conditioned that the petitioner or petitioners will pay all costs and expenses incurred in the proceeding; which said bond shall be filed with the petition.

Viewers and Survey.

Upon the filing of said petition the court shall appoint three viewers, two of whom shall be resident freeholders of said county, and not interested in the result of the proceeding, and the other the county surveyor of the county in which the lands are situated (unless said county surveyor shall be a party in interest, in which case some other competent surveyor shall be appointed in his place who shall receive the same compensation as is allowed by law to county surveyors) who shall, upon a day to be fixed by the court, in the order appointing them, view the lands of the petitioner and the lands which said proposed ditch or drain is to cross, for the purpose of determining: First, whether there is a necessity for the establishment of a ditch; and, second, the most practicable route for said ditch to run, if the same be necessary. The clerk of said court shall furnish to said viewers a certified copy of the order appointing them, which shall warrant them entering upon the lands described in the petition for the purpose of viewing the same.

Viewer's Report.

When said viewers shall have made said examination they shall, within ten days after the day appointed by the court for such examination, report to the court, in writing (filing the same with the clerk of said court), their decision as to the necessity for said ditch and if they deem such ditch necessary, then the county surveyor shall file with such report an accurate description and plat of the proposed ditch, showing the course thereof as recommended by the viewers. The viewers shall also estimate the amount of damage which each separate owner would suffer by reason of the construction thereof.

Summons and Service of.

Upon the filing of the report of the viewers aforesaid, a summons shall be issued in the same manner as summonses are issued in civil actions, and served upon each person owning or interested in any lands over which the proposed ditch or drain will pass. Said summons must inform the person to whom it is directed of the appointment and report of the viewers; a description of the land over which said ditch will pass of which such person is the owner, or in which he has an interest; the width and depth of said proposed ditch, and the distance which it traverses said land, also an accurate description of the

course thereof. It must also show the amount of damages to said land as estimated by said viewers; and that unless the person so summoned appears and files objections to the report of the viewers, within twenty days after the service of said summons upon him, exclusive of the day of service, the same will be approved by the court, which summons may be in the following form:

In the superior court of the state of Washington, for county.
In the matter of the application of for a private ditch.

The state of Washington to

Whereas, on the day of 19..... filed his petition in the above-entitled court praying that a private ditch or drain be established across the following described lands, to wit:

.....
.....

for the purpose of draining certain lands belonging to said

and whereas, on the day of, 19.., Messrs.

and with county surveyor of

county, were appointed to view said premises in the manner provided by law,

and said viewers having, on the day of, 19.., filed their

report in this court, finding in favor of said ditch and locating the same upon

the following course: for a distance of

upon said land, and of

a width of feet and a depth of feet; and

they further find that said land will be damaged by the establishing and con-

struction of said ditch in the sum of \$.....: Now, therefore, you

are hereby summoned to appear within twenty days after the service of this

summons, exclusive of the day of service, and file your objections to said peti-

tion and the report of said viewers, with this court; and in case of your failure

so to do, said report will be approved and said petition granted.

.....

Plaintiff's Attorney.

P. O. Address

In case any person interested in any of the lands to be crossed by such ditch, as aforesaid, does not reside in the county, or cannot be found therein, or conceals himself so that personal service cannot be had upon him, upon proof thereof being made satisfactorily to appear to said court, said summons may be served by publication, in the same manner and with like effect as is done in civil actions: Provided, That no other or different form of summons shall be required for publication than is required for personal service.

Hearing on Exceptions to Report.

Upon the expiration of the time within which exceptions may be filed to the report of the viewers aforesaid, the court shall set a day upon which the petition and the report of the viewers shall be heard and considered by the court. In case exceptions have been filed by any party or parties, which exceptions must have been served upon the petitioner or petitioners prior to the hear-

ing, the court shall hear evidence in regard thereto, and without a jury, pass upon the questions of the necessity for said ditch and the location thereof. If the court finds that such ditch is necessary, and the route selected is the best and most practicable, and that the compensation allowed by the viewers is just and reasonable, then the court shall file his finding to this effect and cause an order to be entered approving the petition and report of the viewers. If, within twenty days from the filing of the findings of facts aforesaid, the petitioner or petitioners shall pay into court all the costs and sums awarded to the owner or owners of the land over which said ditch shall pass, a decree shall be entered establishing the same: Provided, If any party shall except to the amount of damages found by the viewers, then the amount of such damages shall be tried by jury, unless a jury trial be waived by the parties, in which case trial thereof may be had by the court. Such trial shall be at a regular term of said court, at which a jury shall be present, and shall be conducted and verdict rendered in the same manner as in civil actions: Provided, further, That it shall not be incumbent on the petitioner to pay into court the amount of the award or awards of said jury until within twenty days after said verdict shall have been rendered and entered.

Exception Allowed—No Appeal as to Necessity of Ditch.

No appeal shall be taken from the finding of the court as to the necessity of such ditch or as to the route thereof until after final judgment or decree is entered: Provided, That exceptions shall be taken and allowed to such orders at the time that they are made, and appeal from such orders and from the award of damages shall be taken at the same time. All the provisions of the law in regard to appeals in civil actions shall apply to the proceedings provided for in this act.

Viewer's Compensation.

The viewers appointed under the provisions of this act shall receive the sum of two dollars per day for their services, and the county surveyor shall receive such compensation as is allowed by law for like services, the same to be taxed as costs and paid by the petitioner. All other costs shall be same as in civil actions in the superior court.

Other Viewers may be Appointed, if Report not Adopted.

In case the court should not for any reason adopt the report of the viewers, or the same should be deemed insufficient for any reason, the court may appoint other viewers whose duties shall be the same as the duties of the viewers first appointed. [Approved Mar. 14, 1899; L. 1899, p. 233.]

§ 3755. **Ditches and drains.**—The act of March 19, 1895 (Laws 1895, p. 142, Bal. Code, §§ 3755-3762), while authorizing reassessments to pay for construction of drains and ditches, makes no provision in regard to dikes and cannot be held as authorizing a reassessment to cover the expense of dikes and dams constructed under a void statute: *Franklin Sav. Bank v. Moran*, 19 Wash. 200, 52 Pac. 858.

§ 3761. **Ditches and drains — Assessments — Collection — Payments.** — Under Laws 1895, page 144, section 7, which provides that warrants drawn on a ditch fund created by assessment for the payment of cost of construction of a ditch should be paid "in the order of their issue," and under Laws 1893, page 76, which provides that all warrants shall draw interest from date of presentation and

nonpayment thereof, the holder of warrants against a ditch fund is entitled to their payment, with accrued interest, in the order of issuance, even if the payment of interest on such warrants prevents payment of subsequent warrants in the hands of other holders: *State v. St. John*, 30 Wash. 630, 71 Pac. 192.

§ 3762. Drainage ditches—Reassessment authorized.—That part of section 8 of the act of 1895 (Bal. Code, § 3762), concerning the payment of benefits for drainage ditches, which provides that “when an assessment shall be apportioned against any school lands of the state, the county shall pay the same out of its general fund and have a lien on the proceeds of the sale of such lands” for its reimbursement, is

unconstitutional on the ground that funds raised by taxation for general county purposes cannot be applied to the payment of assessments for local improvements, and on the further ground that the proceeds of the sales of school lands cannot be diverted from the permanent and irreducible common school fund: *State v. Henry*, 28 Wash. 38, 68 Pac. 368.

Although school lands benefited by the construction of a ditch cannot be rendered liable for the payment thereof, such benefits cannot be charged up against private property, and, in such cases, the assessment should be levied against the school lands, leaving it to the state to provide therefor by proper legislation: *Id.*

§ 3762a. Authorizing Assessments to Pay Warrants Issued by Drainage Districts Under Act of March 20, 1895.

That when any drainage district has been or shall be established and created under the provisions of an act of the legislature of the state of Washington, entitled “An act to provide for the establishment and creation of drainage districts, and the construction and maintenance of a system of drainage, and to provide for the means of payment thereof, and declaring an emergency,” approved March 20, 1895, and when the drainage commissioners of such district have employed surveyors or draughtsmen or legal assistance as provided in section ten of said act, approved March 20, 1895, and have incurred expenses for the compensation of such surveyors, draughtsmen and legal assistance, and have issued to such surveyors, draughtsmen or persons rendering said legal assistance any warrants, orders, vouchers or other evidences of indebtedness for said expenses so incurred, and when such warrants, orders, vouchers or other evidences of indebtedness remain outstanding and unpaid, and when from any cause no further proceedings are had as provided for in said act approved March 20, 1895, within a reasonable time, it shall be the duty of the county commissioners or the county in which such drainage district is located to assess in accordance with the provisions of this act the lands constituting and embraced within such drainage district for the purpose of paying such outstanding warrants, orders, vouchers, or other evidences of indebtedness, together with interest thereon.

Registration of Warrants and Orders.

That the county auditor of any county in which such drainage district is located upon the written request of any holder or owner of any such warrant, order, voucher or other evidence of indebtedness, mentioned in the preceding section, shall forthwith cause to be published in the newspaper doing the county printing, if any such there be, and if not, then in some newspaper of general circulation in the county, a notice directing any and all holders or owners of any such warrants, orders, vouchers, or other evidences of indebtedness, to present the same to him, at his office, for registration within ninety days from the date of the first publication of such notice; and such notice shall be published once a week for six consecutive weeks. Said notice shall be directed to all hold-

ers and owners of warrants, orders, vouchers or other evidences of indebtedness issued by the drainage commissioners of the particular district giving its name and number, and shall designate the character of the warrants, orders, vouchers, or other evidences of indebtedness, the registration of which is called for by said notice. Upon the presentation to him of such warrants, orders, vouchers or other evidences of indebtedness, the county auditor shall register the same in a separate [separate] book to be kept for that purpose, showing the date of registration, the date of issue, the purpose of issue when the same is shown upon the face, the name of the person by whom presented, and the face value thereof. Any such warrants, orders, vouchers or other evidences of indebtedness, not presented within the time prescribed in such notice, shall not share in the benefits of this act, and no assessment or reassessment shall thereafter be made for the purpose of paying the same.

Holders to File Petition in Superior Court.

That at any time after the expiration of the time within which warrants, orders, vouchers or other evidences of indebtedness, may be registered as provided in the preceding section, the holder or owner of any such registered warrant, order, voucher or other evidence of indebtedness, may for himself and in behalf of all other holders or owners of such registered warrants, orders, vouchers or other evidences of indebtedness, file a petition in the superior court of the county in which such drainage district is located praying for an order directing the publication and posting of the notice hereinafter provided for, and for a hearing upon said petition, and for an order directing the board of county commissioners to assess the lands embraced within said drainage district for the purpose of paying such registered warrants, orders, vouchers or other evidences of indebtedness and the costs of the proceedings provided for in this act. Said petition shall set fourth [forth]:

1. That said drainage district was duly established and created, giving the time.

2. The facts in connection with the expenses incurred by the drainage commissioners in the employment of surveyors, draughtsmen, or legal assistance and the issuance of such registered warrants, orders, vouchers or other evidences of indebtedness.

3. The facts in connection with the compliance with the provisions of this act.

4. A list of such registered warrants, orders, vouchers or other evidences of indebtedness showing the names of owners or holders, the amounts, the date of issuance, the purpose for which issued, when shown upon the face thereof, and the date of presentation for payment, respectively.

Time for Hearing and Publication.

That upon the filing of such petition it shall be the duty of the judge of the said superior court to fix a time for a hearing of said petition, which time shall be not less than sixty days from the time of the filing of said petition, and to enter an order directed to the sheriff of the said county ordering said

sheriff to cause to be published and posted the notice as provided for in the next succeeding section.

Notice by Posting.

That upon the issuance of the order as provided for in the next preceding section it shall be the duty of the sheriff of said county to post, at the courthouse of said county and at three public places in said drainage district, and to cause to be published in a newspaper of general circulation in said county a notice of the time and place fixed by said order of court for the hearing of said petition. Said notice shall contain a statement that said petition has been filed as above provided for, that the said court has fixed a time and place for the hearing of said petition, which time and place shall be stated in said notice, a brief statement of the object of said proceeding upon said petition, a statement of the issuance of the said order of court directing the posting and publishing of said notice, a statement that all persons having any interest in any land in such drainage district, describing the same by its corporate name, may at or before the time fixed for said hearing appear and file objections or exceptions to the granting of the prayer of said petition: A statement that upon the hearing of said petition in case no objections or exceptions have been filed in said proceeding, or in case any objections or exceptions filed be not sustained, and that the allegations of said petition are proven to the satisfaction of the court an order will be entered in accordance with the prayer of said petition. That said notice shall be signed by the sheriff of said county.

Hearing.

That at the time and place fixed in said order for the hearing of said petition, or at such time to which the court may continue said hearing, the court shall proceed to a hearing upon said petition and upon any objections or exceptions which would have been filed thereto. And upon it appearing to the satisfaction of the court from the proofs offered in support thereof that the allegations of said petition are true, the said court shall ascertain the total amount of said registered warrants, orders, vouchers or other evidences of indebtedness with the accrued interest and the costs of said proceedings, and thereupon the said court shall enter an order directing the board of county commissioners to levy a tax upon all the real estate within said drainage district exclusive of improvements, taking as a basis the last equalized assessment of said real estate for state and county purposes, sufficient to pay said outstanding registered warrants, crders, vouchers or other evidences of indebtedness with interest as aforesaid and the costs of said proceeding, and the cost of levying said tax, and further directing the county auditor to issue a warrant on the county treasurer to the petitioner for the costs advanced by him in such proceeding, which shall be paid in the same manner as the said registered warrants, orders, vouchers or other evidences of indebtedness.

Certification of Order.

That the clerk of said superior court shall certify the said order to the board of county commissioners, and to the county auditor and upon receipt of

said order by said board it shall proceed forthwith to execute said order, and upon said levy being made it shall be extended upon the tax-rolls, certified and collected at the same time, in the same manner as other special district taxes.

Order of Dismissal and Costs.

That if upon said hearing the court shall find that the petitioner is not entitled to an order granting the prayer of said petition the court shall enter an order dismissing said petition and taxing the costs against said petitioner.

Appeal.

That from any final order entered by the said superior court as above provided for, any party to said proceeding feeling himself aggrieved thereby may take an appeal to the supreme court of the state of Washington, as provided by the general appeal law of this state. [Approved Mar. 12, 1903; L. 1903, p. 87.]

§ 3767a. Authorizing Tram Roads on Public Highways.

The county commissioners of the several counties in this state may grant to persons, companies or corporations the right to build and maintain tram roads upon the public highways under such regulations and conditions as said county commissioners may prescribe.

Such tram road shall not occupy more than eight feet of the public highway upon which the same is built, and shall not be built upon the track of travel nor in such way as to interfere with the public travel upon such public highways: Provided, That nothing contained in this act shall be construed to prevent county commissioners from granting franchises for electric railways upon public highways. [Approved Mar. 16, 1901; L. 1901, p. 192.]

§ 3767b. Shade Trees and Hedges on Highways.

Any person or company wishing to plant and cultivate shade or ornamental trees on the public highways of the state of Washington may lawfully do so by planting the same in the said highways at a distance not greater than ten (10) feet from the lines dividing the land owned by them from the said highways when the said roads have a legal width of sixty (60) feet or more and at a distance not greater than eight (8) feet from said dividing lines when said roads have a legal width of less than sixty (60) feet: Provided, That such trees shall not be lawfully planted where the entire width of the road is required for public use by reason of heavy cuts, fills, slopes or grades.

It shall be lawful for any person or company to plant hedge fences on the line dividing their property from public highways and to use temporarily a strip of said highway not exceeding eight (8) feet in width for the protection and cultivation of such hedges and to maintain temporary fences within said strip for a period not exceeding four (4) years after the said hedges have been planted.

It is hereby directed to be the duty of road supervisors and overseers to protect trees and hedges now growing or which may be hereafter planted in the public highways of the state when such trees and hedges are located in conformity with the provisions of this act.

Willful injury to or destruction of shade or ornamental trees or hedges in or along the line of any public highway in the state of Washington is hereby declared to be a misdemeanor and the perpetrators of such injury shall be liable for each tree so injured or destroyed, to a fine not less than five dollars (\$5.00) nor more than fifty dollars (\$50.00) or to imprisonment in the county jail for not more than sixty (60) days or to both such fine and imprisonment.

All acts or parts of acts inconsistent with the provisions of this act are hereby repealed. [Approved Mar. 16, 1903; L. 1903, p. 221.]

§ 3768. Highways—Contracts for work—How authority of commissioners exercised.—Although no formal order had been made by a board of county commissioners authorizing certain road work, the road supervisor and those under him performing the work are entitled prima facie to recover therefor against the county, where two of the commissioners, when asked by the supervisor for instructions, had referred him to the third commissioner, who was road commissioner for the district in which the work was done, stating that whatever the latter ordered would be af-

firmed by the board, such having been the loose, but universal, practice of the board, under General Statutes, section 1937, which provided the boards of county commissioners should divide their respective counties into suitable road districts and each commissioner should be ex-officio road commissioner of the several road districts in his commissioner district, and should see that all orders of the board pertaining to the roads in his district were properly performed: *Robertson v. King County*, 20 Wash. 259, 55 Pac. 52.

§ 3769a. Election of Road Supervisors.

There shall be elected in the several counties in this state, between the hours of two and five o'clock P. M. on the second Saturday in October, 1899, and on the second Saturday in October annually thereafter, a road supervisor in each district who shall hold office for one year from and after the first Monday in January succeeding his election and until his successor is elected and qualified.

That all acts and parts of acts in conflict with this act, so far as they fix a different time for such election, and only so far, are hereby repealed, and such elections shall be held upon the notice and in the manner provided by law. [Approved Mar. 6, 1899; L. 1899, p. 38.]

§ 3770. Highways—Duties of overseer—Assignment of claims for road work.—General Statutes, section 1940, providing that no road overseer shall be interested, directly or indirectly, in any contract work to be done in the road district under his charge, would not invalidate the assign-

ment to him, as against public policy, of claims for labor earned by those who had been employed under him, and whose rights had already accrued against the county: *Robertson v. King County*, 20 Wash. 260, 55 Pac. 52.

§ 3771a. Ocean Shore and Beach Declared Highway.

That the shore and beach of the Pacific Ocean including the area or space lying between ordinary high tide and extreme low tide (as such shore and beach now are or hereafter may be) from the southerly point of Damon's Point on the north side of the entrance to Gray's Harbor to the mouth of the Queets river, state of Washington, be and the same are hereby declared a public highway forever, and as such highway shall remain forever open to the use of the public.

No part of said shore or beach shall ever be sold, leased or otherwise disposed of.

No lease or contract of sale now existing on or for any part or parts of said shore or beach shall be renewed or extended.

All laws or parts of laws of the state of Washington in conflict with this act, are hereby repealed.

An emergency exists and this act shall take effect immediately. [Approved Mar. 16, 1901; L. 1901, p. 217.]

§ 3771b. Ocean Shore and Beach Declared Highway.

That the shore and beach of the Pacific Ocean, including the area or space lying, abutting or fronting on said ocean and between ordinary high tide and extreme low tide (as such shore and beach now are or hereafter may be) from the Columbia river or Cape Disappointment on the south to a point three hundred feet southerly from the south line of the government jetty on Peterson's Point, state of Washington on the north, be and the same are hereby declared a public highway forever, and as such highway shall remain forever open to the use of the public.

No part of said shore or beach shall ever be sold, conveyed, leased or otherwise disposed of.

No lease or contract of sale now existing on or for any part or parts of said shore or beach shall be renewed or extended, nor shall any sale or conveyance of any part or parts of said shore or beach be made or executed under or by virtue of any such lease or any contract of sale.

In any and all cases where any part or parts of said shore or beach has been sold or conveyed, or been contracted to be sold or conveyed, or has been leased by the state of Washington to any person or corporation, any such person, or his heirs, executors, administrators or assigns, or any such corporation or its successors or assigns, may reconvey to the state of Washington such part or parts of said shore or beach so sold or conveyed by the state of Washington, or surrender for cancellation any such contract of lease, and thereupon the commissioner of public lands of the state of Washington is hereby authorized and directed to cancel such contract or lease, and to refund or cause to be refunded any moneys received by the state of Washington on account of such sale, conveyance, contract or lease.

All laws and parts of laws of the state of Washington in conflict with this act are hereby repealed.

An emergency is hereby declared to exist, and this act shall take effect immediately. [Approved, Mar. 16, 1901; L. 1901, p. 225.]

§ 3771c. Authorizing County Commissioners to Accept Grants of Highways from the United States.

The boards of county commissioners in their respective counties in this state are hereby authorized and empowered to accept the grant of rights of way for the construction of highways over public lands of the United States, not reserved for public uses, contained in section 2477 of the Revised Statutes of the United States, and said rights of way shall not be less than thirty feet in width nor more than sixty feet in width as said boards of county commissioners shall determine and such acceptance shall be by resolution of such county commis-

sioners spread upon the records of their proceedings: Provided, That nothing herein contained shall be construed to invalidate the acceptance of such grant by general public use or enjoyment, heretofore or hereafter had.

The action heretofore of boards of county commissioners in their respective counties purporting to accept the grant of such rights of way for the construction of highways, is hereby approved, ratified and confirmed and all such highways shall be deemed duly laid out county roads and such boards of county commissioners may at any time by recorded resolution cause any of such highways to be opened and improved for public travel. [Approved Mar. 14, 1903; L. 1903, p. 155.]

§ 3772. Highways—Petition for.—Under Laws 1895, page 82, section 2, giving a land owner residing in the vicinity the right to petition for the establishment of a county road, although he does not own lands abutting thereon, the qualification to petition for the road carries with it the right to resist, if so desired, and consequently the right of appeal from an adverse decision: *Hull v. Stephenson*, 19 Wash. 572, 53 Pac. 669.

Under Ballinger's Code, sections 3771-3782, the county commissioners have no authority upon the hearing of an adverse report thereon by the viewers, to order the establishment of a road along another route and reaching a different terminal than the one viewed, surveyed and reported upon by the viewers: *Flint v. Horseley*, 25 Wash. 648, 66 Pac. 59.

§ 3773. Petition for, sufficiency of.—County commissioners cannot acquire jurisdiction for the establishment of a road, upon a petition which is not sufficiently definite to apprise a surveyor of the location of the proposed road, nor give notice to the land owner of the attempt to subject his land to a public easement: *Shell v. Poulson*, 23 Wash. 535, 63 Pac. 204.

The fact that viewers appointed by the county commissioners to survey a road in pursuance of a petition therefor continue the survey beyond the limits set by the petition would give no authority to the county to establish a road beyond the point named in the petition: *Megrath v. Nickerson*, 24 Wash. 235, 64 Pac. 163.

§ 3774. Bond Required.

Such petition must be accompanied by a bond in the penal sum of three hundred dollars payable to the county, executed by one or more of such petitioners as principal or principals with two or more sufficient sureties, and conditioned that the petitioners will pay into the county treasury the amount of all costs and expense incurred in examining, and surveying the proposed road and in the proceeding, in case the road shall not be established, or in case the application is for the purpose of changing the road for the benefit of the land owner or owners, and no such change shall be made until such cost bill has been paid and the road graded. When the cost is assessed against the principal petitioner the clerk of the board of county commissioners shall file the cost bill with the county treasurer who shall proceed to collect the same. The board may require that waivers for the right of way be secured by the principal petitioner, before an examination or survey is ordered, said petition, bond, and waiver shall be filed with the clerk of the board of county commissioners. [Amendment, approved Mar. 16, 1901; L. 1901, p. 200.]

§ 3775. Viewers—When Appointed.

The board when in session shall consider such petition and bond, and if not rejected they shall, if such petition contains substantially the matters and things required by law, and that the said bond is sufficient, file said petition,

bond and waivers with the county surveyor, who shall make examination and if necessary, a survey of the proposed road. If, however, after an examination he deem the same impracticable he may so report to the board of county commissioners without a survey, or he may examine or survey any other route which would subserve the same purpose and make a report thereon. [Amendment, approved Mar. 16, 1901; L. 1901, p. 200.]

§ 3776. Duty of Viewers.

In selecting the route, the surveyor shall take into consideration the general road system, the grade, cost of construction, maintenance, utility, convenience, inconvenience and expense which will result to individuals as well as the public, if such roads shall be established, and opened or changed. He shall as far as possible, cause notice of the route of the road as far as surveyed to be given to each resident owner, lessee, occupant or owner's agent of lands over which said road passes. He shall receive from each person interested in such land, who will give the same, a statement in writing signed by such person and file the same with his report, and (1) consenting that such road shall be established as surveyed and waiving all claims to damages on account thereof; or (2) claiming damages on account of the establishment or opening of such road, and specifying the amount so claimed. [Amendment, approved Mar. 16, 1901; L. 1901, p. 201.]

§ 3777. Report of Viewers.

When the examination or survey is completed the surveyor shall report in writing to the board of county commissioners (1) his opinion as to the necessity of the road, and whether the same ought to be established and opened; (2) the terminal points, general course and length of the road; (3) his recommendation as to the width of the proposed road; (4) the names of persons interested in lands over which the proposed road passes, who consent to the establishment of the same, and waive all claims to damages; (5) the names of all persons interested in said lands who refuse their consent, and the amount of damages claimed by each; (6) an estimate of damages to each tract of land of nonconsenting persons interested in such tract of land, and in determining such damages it shall be the duty of the surveyor to estimate the benefits and damages accruing to any person by reason of establishing or changing such road, and the sum estimated as benefit must be deducted from the sum estimated as damages for the amount of damages to such person or land; (7) a description of each tract of land over which such road passes, with the name and place of residence or address of the owners, lessees, claimants or encumbrancer if known, of each of said tracts of land, and the quantity of area of land to be taken from each of said tracts; (8) the probable cost of the construction of the road, including all necessary bridges, culverts, clearing, grubbing and grading; (9) such other facts, matters and things as he may deem of importance to be known by the board of county commissioners. [Amendment, approved Mar. 16, 1901; L. 1901, p. 202.]

§ 3778. Claims for Damage.

The surveyor shall file with his report the written consent and waivers of claims to damages by persons interested in the lands affected by the establishment of said road, and the claims for damages procured as provided in this act. [Amendment, approved Mar. 16, 1901; L. 1901, p. 203.]

§ 3779. Surveyor to File Map.

If a survey is made of the proposed road the surveyor shall file a correctly prepared map of said road laid out and surveyed, which map must show the tracts of land over which said road passes with the name of the owner if known, of each tract written thereon, and the surveyor shall also file therewith his field notes of such survey. [Amendment, approved Mar. 16, 1901; L. 1901, p. 203.]

§ 3781. Condemnation of lands for—Community property.—Where community property is sought to be condemned for use as a public highway, the wife, as well as the husband, is a necessary party to the proceedings before the county commissioners for the reason that, under the procedure provided by Laws 1895, page

85, sections 11, 13, if the husband alone was a necessary party, he might be enabled to alienate the land sought to be condemned without the knowledge or consent of his wife: *Chehalis County v. Ellingson*, 21 Wash. 638, 59 Pac. 485.

§ 3782a. Allowance of Damages Subsequent to Appropriation.

The boards of county commissioners of the several counties of the state of Washington are hereby authorized to audit and allow without interest all claims against such county for the survey, laying out, or construction of any road now used by the public and for which no compensation has ever been allowed, such survey, laying out, or construction having been made or done pursuant to chapter 98, page 237, of the Session Laws of 1893.

An emergency exists, and this act shall take effect immediately. [Approved Feb. 21, 1899; L. 1899, p. 23.]

§ 3787. Costs — Tender — Eminent domain.—Section 17, Laws 1895, page 88 (Bal. Code, § 3787), providing that when condemnation proceedings are instituted against any person to whom tender has been made, and such person shall fail to recover judgment for a greater sum than the amount tendered, all costs of such condemnation proceedings shall be taxed against him, is void, since it is in conflict

with article 1, section 16, of the constitution, which provides that private property shall not be taken or damaged for public or private use without just compensation having been first made, or paid into court for the owner; for the reason that under such constitutional guaranty costs cannot be taxed against a nonconsenting owner in condemnation proceedings: *Adams County v. Dobschlag*, 19 Wash. 357, 53 Pac. 339.

§ 3798. Relating to Vacation of Roads.

Petition and Bond.

When a county road, or part thereof, is considered useless, and ten freeholders residing in the vicinity of said road may petition the board of county commissioners to vacate the same, such petition shall show the land owned by each petitioner, and shall also set forth that such road will be useless as a part of the general road system, that the public will be benefited by its vacation. Such petition shall be accompanied by a bond in the penal sum of one hundred dollars, payable to the county, executed by one or more of such petitioners as

principal or principals with two or more sureties, and conditioned that the petitioners will pay into the county treasury the amount of all costs and expenses incurred in the examination, report, and all other proceedings pertaining to such petition or vacation.

Report of Surveyor.

The county commissioners when in session shall consider such petition and bond and if not rejected shall file the same with the county surveyor with instructions to examine said road and make a report in writing on the same. The surveyor shall include in his report his opinion as to whether the road should be vacated, whether the same is in use or has been in use, whether it will be advisable to preserve the same for a general road system in the future, whether the public will be benefited by the vacation and all other facts, matters and things which will be of importance to the board of county commissioners, and also file his cost bill.

Day of Hearing—Notice.

The board when in session shall fix a date for hearing the said report and shall cause notice of said hearing to be published in the county official newspaper and posted in a conspicuous place on said road, at least twenty days before the day set for hearing as follows: If the road be one mile or less than one mile long there shall be one notice posted near each end of said road; if said road be more than one mile long there shall be one notice posted near each end and one notice on each mile of said road.

§ 3799. Objections, Hearing—Order.

On the day set for hearing of said report the commissioners shall consider the same, together with the petition, and any objection that may be made to vacating the road, and if the road may be useful as a part of the general road system it shall not be vacated, but if the public will be benefited by the vacation then the commissioners may vacate the road or any portion thereof, and not otherwise; if the commissioners shall determine to vacate the road, or any part thereof, they shall, on payment of all costs by the principal petitioner declare the road vacated and make a record of the same.

Expense—Collection.

The clerk of the board of county commissioners shall make a statement in writing of all costs and expenses incurred in the proceedings and file the same with the county treasurer who shall proceed to collect the same.

When Vacated.

No public road or highway or part thereof shall be vacated or cease to be a public highway until so ordered by the proper board of county commissioners, or by operation of law, or judgment of a court of competent jurisdiction.

Approval of Plat not to Work Vacation.

The approval of any plat by the board of county commissioners or mayor and common council of any municipality shall not vacate any street, public road, or highway covered by such plat or over which such plat is laid.

Sections 3798 and 3799 of Ballinger's Annotated Codes and Statutes of the state of Washington be and they are hereby repealed. [Approved Mar. 16, 1901; L. 1901, p. 190.]

§ 3833a. Highways—Collection of Tax in Money and Doing Work by Contract—Poll Tax.

That every male person resident of this state and every person sojourning in this state for six months or more, over twenty-one years and under fifty years of age, outside the limits of an incorporated city or town, unless by law exempt, shall annually pay a road poll tax of two dollars which shall be due and payable in money without any exemption whatsoever on the first day of March in each year or in the case of sojourners, at the expiration of six months' sojourn in this state. All poll taxes shall be paid into the district funds.

List of Persons Subject to.

The county assessors shall, annually at the time of the listing and assessment of personal property, make a separate list of all persons liable under the law to the payment of a poll tax, and shall at the same time collect from the persons listed, the tax for which such persons are liable by law and return such lists to the boards of county commissioners together with the statement of the persons who have paid and those delinquent. He shall pay all moneys collected to the county treasurer. The remaining taxes due or delinquent shall be collected by the county commissioners or as they shall direct.

Debtor may Pay for his Creditor.

Any person, firm or corporation owing money to any person from whom a poll tax or taxes is due or delinquent, may pay to any duly authorized collector of poll taxes, such amount or amounts due or delinquent and such payments shall be a discharge of the debt, to the extent of such payment, and may be pleaded in defense to any action brought for the money paid. In all actions brought by poll tax debtors for money paid as herein provided, the burden of proof that he has paid, or showing that he does not owe the tax shall be on such debtor.

Payment Enforced, How.

The county commissioners or any poll tax collector may authorize in the name of any county where any poll tax is sought to be collected, invoke in the collection of such tax, any process of civil procedure authorized by law. Public officers of this state shall render any service demanded by the commissioners or any collector duly authorized by them without charge of fee of any kind: Provided, That county commissioners may allow in the case of public officers who receive their compensation by fees, such allowance chargeable against the taxes collected as they may deem just.

Lien on Property.

Any poll taxes due or delinquent are, together with penalty and interest

at the same rate as attaches to delinquent real property taxes, shall be chargeable to and shall be lien from the time such taxes are due and payable on any real or personal property of the person owing the tax. The county commissioners may certify a list of persons from whom poll taxes are due or delinquent, to the county auditor who shall extend such list or lists on the tax rolls, against the real or personal property of such tax debtor.

Methods of Collection Concurrent.

The means or methods provided in this act for the collection of poll taxes, shall be held to be concurrent and any two or more may be prosecuted at the same time.

Road Districts.

The boards of county commissioners of the several counties of this state, shall at any of their regular sessions, divide their respective counties into not to exceed four road districts for the purpose of this act and cause a brief description thereof to be entered in the county records. [They] may change such districts but not oftener than once in any one year.

Levy for Road and Bridge Fund.

The boards of county commissioners shall annually, at the time of making the levy for county purposes, levy and certify to the county auditor, a tax of not more than three mills on the dollar, on all the taxable property in the county, which shall be payable in money, for the general road and bridge fund; from which fund they shall order paid such sums as may be found necessary for the construction, repair and improvement of roads and bridges.

Levy for Road District Fund.

The boards of county commissioners shall annually at the time of making the tax levy for general, road and bridge purposes provided for in section 6 and levy and certify to the county auditor, a tax of not more than six mills on the dollar of all the taxable property in the road districts previously defined by them, which shall be payable in money for a road district fund, from which fund they shall order paid such sums as may be found necessary for the construction and repair of roads in the several districts where the tax is levied.

Extending on Tax-rolls.

When taxes shall have been levied and certified for the general and district funds as provided for in the last two preceding sections, the county auditors shall extend such taxes on the tax-roll of their respective counties, against all of the property subject to said levies, in the same manner as other taxes are extended.

Collection.

The county treasurers shall collect all taxes on the rolls, whether poll or property taxes in money as other taxes are collected, and credit the proper funds with the amounts collected.

Appointment of Supervisor—Bond—Removal.

The boards of county commissioners may appoint from among the qualified

electors in each district, for such time as they may determine, with compensation not to exceed \$4.00 per day, a road supervisor who shall enter into a bond satisfactory to the commissioners. The commissioners shall have power to remove any supervisor.

Duty of Supervisor.

It shall be the duty of the road supervisor, under the direction of the county commissioners to keep the roads and bridges in his district in as good repair as the funds available will allow and keep all roads open for travel at all times and make a detailed monthly report of all work performed in his district during the previous month, to the boards of county commissioners; examine and certify all bills for labor and material in his district; and perform such other duties as may be required by the commissioners for the proper maintenance of the highways.

Annual Meetings.

The supervisors of the several road districts shall meet with the county commissioners on the first Tuesday of the board's regular session in April, to outline the road improvements to be made.

How Funds Expended.

All the funds in the county treasury raised by the taxation herein provided shall be expended by the county commissioners and all road and bridge construction, improvement or repair shall be made by the county commissioners in the following manner:

First. All road and bridge construction improvement or repair of which the estimated cost shall be under \$50, may be let by the commissioners or they may authorize the road supervisor to let the same without bid or advertising as hereinafter provided.

Second. In all bids, the county commissioners may require bidders upon such conditions as they may impose, before advertising for bids, to deposit with their bids certified checks or bonds, approved by the commissioners, in the sum of ten per cent of the estimated contract price, and said amount, if the conditions are not fulfilled, shall be by the commissioners declared forfeited and shall be paid into the general road and bridge fund.

Third. In all road and bridge construction, improvement or repair of which the estimated cost shall be more than \$50 and less than \$500, shall be let by contract by the county commissioners on plans and specifications previously prepared by them, to the lowest and best bidder, calls for said bids to be made by posting for ten days three notices in three public places as follows: One at the most public place on the route of the proposed work, one at the nearest postoffice to the proposed work and one at the county courthouse.

Fourth. In road and bridge construction, improvement or repair of which the estimated cost shall be more than \$500, shall be let by contract by the county commissioners on plans and specifications previously prepared by them, to the lowest and best bidder, calls for said bids to be made by posting three notices as above provided for and publication in the official county paper for not

less than three consecutive weeks prior to the time set by the commissioners for the opening of bids. The county commissioners shall require a bond of the successful bidder in double the amount of the estimated cost of construction improvement or repair of roads or bridges, conditioned for the faithful performance of the contract according to law and any requirements the commissioners may impose at the time of advertising for bids.

No money shall be paid by the county commissioners to exceed fifty per cent of the value of any work done at any time until the entire work is completed by the contractor and accepted by the commissioner.

Adoption of Provisions of Act by Vote of Electors.

The provisions of this act shall not become operative in any county in this state unless a majority of the qualified voters thereof shall vote in favor of adopting the system herein provided which question shall be submitted as follows:

First. The system provided for herein shall be known for the purposes of elections as "The system of collection of road taxes in money and the expenditure thereof by contract."

Second. Upon the petition of a number of qualified voters of any county equal to one-twentieth of the voters that voted in such county for the candidate for governor elected at the last preceding election, the county commissioners shall submit at the next general election and place the question on the ballots for such election.

Third. Upon the petition of a number of qualified voters of any county equal to one-tenth of the voters that voted in such county for the candidate for governor elected at the last preceding election, the county commissioner shall call a special election to be held in not less than thirty and not more than ninety days, provide ballots and submit the question at such special election.

If a majority of the voters voting at any election in any county, vote in favor of the adoption of the provisions of this act, thereupon the provisions of this act shall become operative in such county, this act shall receive a liberal construction to effect its objects and all laws relating to any other system shall be superseded by the provisions of this act. [Approved Mar. 18, 1901; L. 1901, p. 273.]

Amended: L. 1911 for County Road & Bridge Fund
§ 3833b. Poll Tax—Road and Bridge Tax. *Chap. 76 Laws 1911*

All male persons of this state over twenty-one years of age and under fifty years of age, outside the limits of an incorporated city or town, unless by the law exempt, shall annually pay a road poll tax of two dollars, which shall be due and payable in money without exemption whatsoever on the first day of March in each year. All poll taxes shall be paid into the district road and bridge fund of the district in which the same shall be collected.

The county commissioners or any poll tax collector they may authorize shall annually, commencing on the first day of March in each year, demand a poll tax from each person liable therefor.

Employers to Furnish List of Employees Subject to Poll Tax.

Any person, firm, corporation or company, or agent thereof, having persons in his or their employ liable to pay a poll tax as hereinbefore provided, shall

upon demand duly made by such collector, furnish a list showing the names of all persons so employed, and the wages due and owing to each of such employees, and if the amount of said poll tax be then due it shall be paid at once to the collector by said employer. Any such employer refusing to furnish such list upon demand shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum not exceeding one hundred dollars, and may also be imprisoned in the county jail not exceeding one month. And any payment made by said employer as herein provided shall be a complete defense in any suit or action brought by the employee for such sum or sums.

Collection of.

The county commissioners or any poll tax collector may in the name of the county where any poll tax is sought to be collected, invoke in the collection of such tax any process of civil procedure authorized by law. Public officers of this state shall render any service demanded by the commissioners or any collector duly authorized by them, without charge or fee of any kind: Provided, That the county commissioners may allow in the case of public officers who receive their compensation by fees such allowance chargeable against the taxes collected as they may deem just.

Lien for.

Any poll taxes due or delinquent shall be chargeable to and shall be a lien from the time such taxes are due and payable on any real or personal property of the person owing the tax. The county commissioners may certify a list of persons from whom poll taxes are due or delinquent to the county auditor who shall extend such list or lists on the tax rolls against the real or personal property of such tax debtor.

Cumulative Methods of Collection.

The means or methods provided in this act for the collection of poll taxes, shall be held to be concurrent and any two or more may be presented at the same time.

Road Districts.

The board of commissioners of the several counties of this state shall at their regular session next preceding the date of the levy of taxes for the year 1903 divide their respective counties, exclusive of incorporated cities and towns, into not to exceed four road districts for the purpose of this act and shall cause a description thereof to be entered in their records.

Levy for County Road and Bridge Fund.

The boards of county commissioners shall annually, at the time of making their levy for county purposes, levy and certify to the county auditor a tax of not more than four mills on the dollar on all taxable property in the county, which shall be payable in money, for the general road and bridge fund, from which they shall order paid such sums as may be found necessary for the construction, repair and improvement of roads and bridges, in which all the inhabitants of the county are interested.

District Road and Bridge Fund.

The boards of county commissioners shall annually, at the time of making the tax levy for general road and bridge purposes provided for in section 8, levy and certify to the county auditor a tax of not more than ten mills on the dollar of all the taxable property in the road districts previously defined by them, which tax shall be payable in money for a district road and bridge fund, and from which fund they shall order paid such sums as may be found necessary for the construction and repair of the roads and bridges in the several districts where the tax is levied.

When taxes shall have been levied and certified for the general and district funds as provided for in the last two preceding sections, the county auditor shall extend such taxes on the tax roll of their respective counties, against all the property subject to such levies, in the same manner as other taxes are extended.

The county treasurer shall [collect] all the taxes on the rolls, whether poll or property taxes, in money, as other taxes are collected, and credit the proper funds with the amounts collected.

Supervisors—Compensation—Bond—Removal.

The boards of county commissioners may appoint from among the qualified electors in each district, for such time as they may determine, with compensation not to exceed \$4 per day, a road supervisor who shall enter into a bond satisfactory to the commissioners. The commissioners shall have power to remove any supervisor at will.

Duties of.

It shall be the duty of the road supervisor, under the direction of the county commissioners, to keep the roads and bridges in his district in as good repair as the funds available will allow, and keep all roads open for travel at all times, and make a detailed monthly report of all work performed in his district during the previous month to the board of county commissioners; examine and certify all bills for labor and material in his district; and perform such other duties as may be required by the commissioners for the proper maintenance of the highways.

Annual Meetings of.

The county surveyor and the supervisors of the several road districts shall meet with the county commissioners on the first Tuesday of the board's regular session in April, to outline the road improvements to be made.

Funds, how Expended.

All the funds in the county treasury raised by the taxation herein provided shall be expended by the county commissioners and all road and bridge construction, improvements or repairs shall be made by the county commissioners in the following manner:

First. All road and bridge construction, improvements or repairs of which the estimated cost shall be under one hundred and fifty dollars may be done by the road supervisor of the proper district under the direction of the county surveyor.

Second. Road and bridge construction, improvement or repair of which the estimated cost shall be more than one hundred and fifty dollars, except in case of emergency, shall be let by contract by the county commissioners, on plans and specifications previously prepared by the county surveyor, under the direction of the board of county commissioners, to the lowest and best bidder; calls for said bids to be made by publication in the official county paper for not less than three consecutive weeks prior to the time set by the commissioners for the opening of bids, provided that in any county having no official county paper, such notice shall be given by posting for ten days a notice in three of the most public places in such counties. The county commissioners shall require a bond of the successful bidder in the full amount of the contract price of construction, improvement or repair of roads or bridges, conditioned for the faithful performance of the contract according to law and any requirements the commissioners may impose at the time advertising for bids.

Third. Each bidder shall deposit with his bid a certified check in an amount equal to five per cent of his bid. Should the bidder to whom the contract is awarded fail to enter into a contract with the commissioners and furnish the bond hereinbefore provided within five days after the notice of such award, the amount of said check shall be forfeited to the general road and bridge fund of the county.

Fourth. The county surveyor shall have full supervision of the construction and repairs of all public roads and bridges within his county, under the direction of the county commissioners.

No money shall be paid by the county commissioners to exceed seventy-five per cent of the value of any work done at any time until the entire work is completed by the contractor approved by the county surveyor and accepted by the commissioners.

Transfer of Existing Funds.

After the establishment of the districts as herein provided, the county treasurer shall transfer all funds to the credit of the several road districts now existing to the road and bridge fund of the respective district in which the present road districts are situated, and such newly created districts shall assume all liabilities and indebtedness of the present road districts situated within their respective limits.

This act shall not take effect until the first Monday in January, 1904, except that the county commissioners shall, at the time of making the general tax levy in 1903, make the levy for the road and bridge tax provided for in section 8, and for the district road and bridge tax provided in section 9.

All acts and parts of acts in conflict with the provisions of this act are hereby repealed. [Approved Mar. 16, 1903; L. 1903, p. 223.]

§ 3838a. County and City Joint Bridges.

That any county within the state of Washington, by and through its board of county commissioners, and any city of the first, second or third class, by and through its legislative body, be and they are hereby authorized and empowered to

join in paying for the construction of any bridge, trestle, or any structure which crosses any stream or body of water, and forms a connection between any county road or highway and a street or avenue, when such stream or body of water is within or partly within such city. [Approved Mar. 13, 1901; L. 1901, p. 120.]

[§§ 3923, 3924, 3925, repealed by act of 1899, p. 171.]

§ 3926. Dismissal of Petition—Costs.

If the bond be approved by the clerk of the board of county commissioners, he shall immediately deliver a copy of the petition to the commissioners who may appoint a time for the hearing and consideration of said petition, and if the commissioners upon the hearing find against the improvement, they shall dismiss the petition and proceedings at the cost of the petitioners; and they shall cause an itemized bill of costs to be made up by the clerk for their examination and approval, which shall include the per diem of the engineer, together with all other costs necessarily made. [Amendment, approved Mar. 13, 1899; L. 1899, p. 169.]

§ 3927. Order for Improvement—Duty of Engineers.

If the commissioners find for the improvement they shall cause to be entered on their journal an order directing the engineer to proceed with the construction of said improvement in the following manner:

1. The county surveyor shall be the engineer and shall go upon the road described in the petition or as changed in accordance with this act, and survey and level the same, and set a stake at every hundred feet, numbering from the place of beginning, out; note the intersection of lines and boundaries of lands, road districts, or township lines, land marks and road crossings, and make a report, profile and plat of the same, and estimate the number of cubic yards of earth or other substance to be removed, cut or filled, necessary bridges, culverts and drains to be constructed, obstructions to be removed, the materials along or adjacent to said road which can be made available and used in construction of the same, the estimated cost thereof, and an estimate of the cost of each working section, as hereinafter provided, and of each section of 100 feet.

2. The engineer shall also make and return a schedule and plat of all the lots and lands lying within the improvement boundary, which plat shall be drawn upon a scale sufficiently large to represent all the meanderings of the road proposed to be improved, and shall distinctly show the boundary lines of each lot or tract of land included in the improvement boundary, the name of the owner of each lot or tract of land as the same may appear upon the records at the time, and an estimate of the total cost of the entire improvement proposed, which estimate shall include all fees and salaries estimated to be paid for locating, supervising and appraising, together with such other matters as the engineer may deem material. The profile shall show the surface line, the grade line and gradient fixed, and the engineer shall make and file with his report an itemized bill of all costs made in the discharge of his duty under this section, and shall file his report with the clerk of the board of county commissioners within thirty days after making the survey and level. [Amendment, approved Mar. 13, 1899; L. 1899, p. 169.]

§ 3933. Appeal from order establishing—Vacating—Alteration of.—A final order of the board of county commissioners vacating a road and establishing another, in lieu thereof, is appealable: *Hull v. Stephenson*, 19 Wash. 572, 53 Pac. 669.

The matter of establishing a road being by Laws 1895, page 82, left wholly to the discretion of the board of county commissioners, and their action in that respect being the exercise of quasi legislative authority, the refusal of the board to establish a road upon petition therefor does not present a question which the superior court can review on appeal, since that court cannot take cognizance of cases requiring the exercise of other than purely judicial power: *Selde v. Lincoln County*, 25 Wash. 199, 65 Pac. 192.

§ 3946. Construction of—Payments for. Under Laws 1893, page 301, section 31 (Bal. Code, § 3946), providing that when

the board of construction shall file with the clerk of the board of county commissioners their certificate stating the total amount of work done or material furnished upon the construction of a public road, the clerk shall thereupon draw a warrant upon the county treasurer in favor of the contractor for the amount due, such amount becomes vested in the contractor, by virtue of the statute, upon the filing of the required certificate: *State v. Van Wyck*, 20 Wash. 39, 54 Pac. 768.

County warrants in payment of sums due a contractor for work done in the construction of public roads, under Laws 1893, page 301, which provides that such warrants, upon the filing of the required certificate by the board of construction, shall "thereupon" issue, may be drawn at once, although by general statute the auditor is granted ten days' time in which to draw warrants: *Id.*

§ 3948. County Surveyor to Inspect Road Work.

It shall be the duty of the county surveyor in charge of said work, if the county commissioners so direct, to inspect all work of construction from time to time and see that the same is being done according to contract. [Amendment, approved Mar. 13, 1899; L. 1899, p. 171.]

§ 3948. Duty of commissioners to inspect work.—Under Laws 1893, page 301, section 33 (Bal. Code, § 3948), providing for the establishment of a system of improved roads, a board of construction appointed thereunder with power to inspect the work and suspend it in case of disagreement until the engineer can decide the controversy, is not authorized to can-

cel and annul a contract made by the county or declare a forfeiture thereunder, but may merely suspend construction pending the engineer's determination whether the work is being done according to contract and the proper material is being used: *State ex rel. Dahlquist v. Van Wyck*, 20 Wash. 39, 54 Pac. 768.

§ 3951. Construction Contracts.

Construction done under the yearly installment plan shall commence at the place of beginning and be completed without intermission toward the place of ending, and the payment of improvements under such installment plan shall not in any year exceed the benefit assessments for that year. The engineer shall divide the road into as many annual construction sections of equal cost as there are years of construction, and let contracts from time to time during the progress of construction in like manner as hereinbefore provided, and any excess funds appropriated to one section shall be applicable to the succeeding section. [Amendment, approved Mar. 13, 1899; L. 1899, p. 171.]

§ 3972. State Road, Marble Mount.

That there be laid out, established, constructed and maintained for the use of the public a state wagon road beginning at the nearest practicable point at the mouth of the Sans Poil creek in Ferry county; thence in a northerly direction up the Sans Poil creek by the most feasible and practicable route to the town of Republic in said county; thence in a westerly direction to the Okanogan

river at a point about one mile north of and opposite the mouth of Johnson creek in Okanogan county; thence in a westerly direction along the state road as heretofore laid out and established from a point about three miles south of Best's ranch on Bonaparte creek to the east bank of the Methow river; thence across said Methow river at the most practicable bridge site near the mouth of Twisp river, to be selected; thence in a westerly direction over the road already laid out and established across the Twisp pass to the bridge on Bridge creek near the mouth of said creek; thence in a southeasterly direction to Stehekin landing at the mouth of the Stehekin river at the head of Lake Chelan; thence from the bridge near the mouth of Bridge creek in a westerly direction over and across the summit of the Cascade mountains, as the said road has been heretofore laid out and established, to a point on the Skagit river opposite the town of Marble Mount in Skagit county.

§ 3973. Commission for.

That a commission of three members is hereby created, one of which shall be a resident of Ferry county and two of Okanogan county, to be appointed by the governor and to be known as the board of state road commissioners.

§ 3974. Term of Office—Vacancy—Removal.

That the commissioners provided for in section 2 of this act shall hold office until the road is completed or the appropriation made in this act is exhausted, unless sooner removed. Should a vacancy occur in said commission by death, resignation or otherwise, such vacancy shall be filled by appointment by the governor. The governor is hereby empowered to remove at any time any member of such commission if in his judgment he shall deem it best to do so.

§ 3975. Oath—Bond.

That each of the commissioners provided for in this act shall take and subscribe an oath or affirmation before some person authorized by law to administer the same, to faithfully and impartially discharge the duties of his office as a member of such commission. Each of said commissioners shall execute a bond unto the state of Washington in the sum of five thousand dollars (\$5,000.00) to be approved by the governor, conditioned for the faithful performance of his duty as a member of the board of state road commissioners and further conditioned that they will well and truly account for all money which is hereby appropriated, and will honestly expend the same as by this act provided, which bond shall be filed with the secretary of state.

§ 3976. Powers.

The said board of road commissioners shall be vested, for the purpose of establishing such road, with all the powers vested by law in the boards of county commissioners of the several counties and in the viewers generally relating to the control and management of county roads, and shall proceed as nearly as shall be practicable in conformity with the laws provided for the establishment of county roads.

§ 3977. Right of Way.

That said commissioners are hereby empowered to take deeds of right of way in the name of the state and to cause them to be filed with and recorded

by the auditor of the proper county where said deeds can be obtained without expense to the state other than may be necessary for the drawing and recording of the same, and when deeds of right of way cannot be so obtained said commissioners are hereby empowered to cause, when necessary, the right of way for said road to be appropriated and condemned by the state in the same manner as is or may be provided by law for the appropriation and condemnation of real estate for county or public roads.

§ 3978. Appropriation.

For the purpose of carrying into effect the provisions of this act for the establishment and construction of said state wagon road there is hereby appropriated the sum of twenty thousand dollars (\$20,000) or so much thereof as may be necessary, to be expended upon the said road as hereinafter provided and in no other manner.

§ 3978a. Conditions Precedent to Construction.

Before beginning the construction of said road or the improvement of same or any part thereof the said commissioners shall carefully view the road, decide upon the width of the roadbed and grades and decide upon the number of bridges, the most practical places where bridges can be built over streams, and shall carefully estimate the building and improvement of said road and the cost of the bridges thereof and shall select the most feasible route and shall superintend the opening and construction of said road and bridges as herein provided and in no other manner.

§ 3979. Commissioners' Compensation.

Each member of said board of commissioners shall receive five dollars (\$5.00) per day for each and every day employed in the discharge of his work, which shall also be pay for his traveling and other expenses. The board of commissioners shall examine and allow all bills incurred by them in the discharge of the duties and bills for all contract work provided for in this act and present their vouchers to the state auditor, who is authorized to audit said bill and if found correct to draw his warrant on the treasurer for the several amounts so allowed, and the state treasurer is hereby authorized to pay said warrants out of any money in the treasury appropriated for this purpose: Provided, That no expense shall be incurred for the payment of which no appropriation shall have been made.

§ 3980. Record, Kept Where.

All letters, papers and documents relating to the establishment of said road, together with a full and complete report of all transactions and proceedings and an itemized account of all expenses incurred in connection therewith, shall be filed in the office of the state auditor and a complete and accurate plat and description of the route of the road shall also be filed in the auditor's office in each of the several counties within whose boundaries portions of the road extend.

§ 3981. Maintenance.

After the completion of said road, and when the term of office of such board of commissioners shall have expired, it shall become the duty of the board of

county commissioners, respectively, of the county in which said road extends, to keep such portions of the road as are situated in like manner as though the same was a county road.

§ 3982. Disbursement of Appropriation.

The money appropriated in this act, or so much thereof as may be necessary, shall be expended in the following manner: No more than eight thousand eight hundred dollars (\$8,800.00) for the building and repairing of said road from the mouth of the Sans Poil creek, on the Columbia river, to the town of Republic; not more than sixteen hundred and fifty dollars (\$1,650.00) from said town of Republic to a point on the Okanogan river about one mile north of and opposite the mouth of Johnson creek, in Okanogan county; not more than two thousand four hundred dollars (\$2,400.00) for the erection of a bridge over Methow river at a point where the road crosses said river; not more than sixteen hundred and fifty dollars (\$1,650.00) for the erection of four bridges, to wit: Two on Bridge creek, one on Maple creek and one on the north fork of Bridge creek at the point where the said road crosses these creeks, respectively, and no more than five thousand five hundred dollars (\$5,500.00) shall be expended in building and repairing the road from the mouth of Bridge creek to Stehekin landing, at the mouth of Stehekin river at the head of Lake Chelan, in Okanogan county.

§ 3983. Work must be by Contract.

That all of the work done upon the road above described, or any part thereof, must be by contract, and it is made the duty of the commission to segregate the work of repairing and building of said road in such a manner as to let the same by contract, and to that end they must advertise for bids for building or repairing the same, or any part thereof, in such a manner as they believe most advantageous, by advertising in at least one newspaper published in the county in which said work is to be done for a period of at least two weeks for bids for the building or repairing of said road, or any part thereof, giving the necessary specifications therefor. And it is made the duty of said board to let the building or repairing of said road to such contractor or contractors as are the lowest and most responsible bidders, but the commission shall have the right to reject any or all bids, and readvertise for bids. Before letting such contract or contracts, the contractor or contractors must execute a good and sufficient bond, to be approved by said commission, in double the sum of the contract price, conditioned for the faithful performance of the contract according to plans and specifications; that no more than eighty per cent of the contract price shall be paid to the contractor or contractors until the contract or contracts are completed and accepted by said state road commission, and in no event shall more than eighty per cent be paid upon the work as it progresses.

§ 3983a. Property and Funds with Cascade Road Commission Appropriated to.

All instruments, camp equipage, material, tools, horses and supplies now belonging to the state and accounted for by the last state road commission for the Cascade state road shall be turned over to the commissioners appointed by the

governor under this act, and all funds in the treasury belonging to the Cascade state road shall be credited to the road fund created under the provisions of this act and be subject to the order of said commissioners appointed under this act.

All previous acts to provide for a state wagon road known as the Marcus and Marble Mount state wagon road through the Cascade mountains, and making an appropriation therefor, are hereby repealed.

An emergency exists, and this act shall take effect immediately. [Approved Mar. 14, 1899; L. 1899, p. 229.]

§ 4047a. Ways of Necessity for Logging.—Right of Way—Condemnation.

Any owner or owners of any timbered lands, or timber, desiring to cut or remove the same to a point wherein the same may be manufactured, transported, by either rail or water, driven, rafted, assorted, boomed or shipped for lumbering purposes and having no practical route for a road or right of way whereon to remove or haul said timber, shall have the right to condemn as hereinafter provided, a right of way for a logging road, or chute, stream, or watercourse from said lands to any waters, railroad logging road or chute or public highway, by the most direct and feasible route, and shall have the right to condemn the use of any stream, watercourse, slough, pond or lake together with sufficient land along the bank or banks thereof, to enable the driving, rafting, booming or handling of such timber for the removal of said timber provided that proceedings to obtain such right of way shall conform to the law allowing private corporations to condemn a right of way in this state, except as is hereinafter provided.

§ 4047b. Application for to Superior Court.

Such owner or owners desiring the location and establishment of such right of way, shall file a complaint with the clerk of the superior court, in the county in which such proposed right of way or some part thereof is situated, against all persons owning or claiming an interest in, or lien upon, the land, stream, watercourse, slough, pond or lake sought to be condemned, so far as the same can be ascertained from the public record, which complaint shall describe with reasonable certainty the commencement and termini of such proposed logging road or chute, or watercourse, and the route thereof, together with a description of the land or other property sought to be condemned, the particular description of the timber land the product of which it is proposed to haul over said right of way, together with an estimate of the amount of timber contained on each tract of land owned separately, to which complaint shall be attached a map showing the said timber lands and the route of the said logging road or chute, or substantially the course of such stream, watercourse or slough, or the location of such pond or lake and the description of the property through which such stream, watercourse or slough has its course, or upon which such pond or lake is situated, and said complaint be verified and otherwise conform to complaints in civil action, and there shall be filed therewith a bond to [in] the sum of two hundred dollars, payable to the state of Washington, for the use and benefit of all parties to said action, conditioned that such owner or owners will pay or cause to be paid all costs and expenses of said proceedings

when ordered to do so by the superior court, which bond shall be signed by two or more good sureties to be approved by the clerk of the superior court.

§ 4047c. Notice to Owners—Appointment of Commissioners.

Upon the filing of said complaint, and the filing and approval of said bond, the clerk shall issue and give to such owner or owners for service a notice directed to the defendant in such action requiring them to appear in said cause within twenty days after service upon them of said notice, and show cause why an order should not be entered establishing such right of way, said notice to contain the name of the parties to such action, the purpose for which the same is being prosecuted together with a description of the land through which said right of way is sought to be condemned. Said notice shall be in substance as follows:

In the Superior Court of the State of Washington, in and for the County
of

.....,	}	Plaintiff,
vs.		
.....,		

Notice of proceedings to condemn right of way for logging purposes.

The State of Washington, to, the above-named defendant.

You are hereby notified that the above named plaintiff has filed in my office a complaint and bond as required by law, and that the object and purpose of this proceeding is to condemn a right of way for logging purposes upon, over and across the following land, to wit: (Here give description of lands by legal subdivisions through which said right of way is sought to be condemned) and you are hereby required to appear in said cause within twenty days from date of service of this notice upon you, if served within this state, and within sixty days if served without this state, and show cause why an order shall not be made establishing said right of way for logging purposes and ascertain just compensation for all land taken or injuriously affected by reason of the appropriation of said right of way.

Witness my hand and seal of said superior court this day of,
A. D.

.....,
Clerk of said Superior Court.

§ 4047d. Service of Notice.

Said notice shall be served in the same manner that a summons is served in a civil action, either personally or by publication, and when service has been completed and time expired for appearance, the court shall proceed to hear and determine any objections to said proceedings, and shall when requested by any party to said action appoint not to exceed three commissioners, who shall upon a day to be fixed by the court, in the order appointing them view the lands owned

or controlled by the plaintiff, and the lands of the defendants and proposed right of way and logging road or chute or watercourse, and report to the court whether in their opinion there is a necessity for the establishment of such right of way and the most practicable route thereof, setting forth an accurate description of such right of way sought to be condemned. Such report to be made and filed within such time as may be prescribed by said court and said commissioners shall be under control of said court and shall receive as compensation for their services such sum as the court shall deem proper: Provided, however, That the court shall have the power to discharge said commissioners at any time and appoint others in their places.

§ 4047e. Exceptions to Commissioner's Report.

Any person interested may file exceptions to said report within five days after the same shall be filed with the clerk and the court shall proceed to hear and fully determine any objections to said proceedings, or said report, and if it finds that it is necessary for the practical handling and removal of such timber, to have said logging road or chute, stream, watercourse, slough, pond or lake and to condemn such right of way it shall determine the route thereof sought to be condemned, and shall order the cause set down for trial by jury, unless the parties appearing waive a jury trial and agree that the cause shall be submitted to the court for determination, and when requested by plaintiff shall summon a special venire of jurors to try said case, provided plaintiff shall deposit with the clerk of the court the sum to be fixed by the court, sufficient to pay the expenses of such jury.

§ 4047f. Trial by Jury.

Such trial shall be conducted as trials in civil actions and a verdict shall be rendered by the jury, when it is tried by a jury, and a finding by the court when tried before it, assessing and awarding the amount of damages which shall result to any person, firm, corporation, state, county or municipal corporation by reason of the appropriation and use of such lands or other property for said logging purposes, and shall ascertain and award the amount of damages to be paid to such owners, respectively, and to all tenants, encumbrancers, or others interested for the taking or injuriously affecting such lands or other property for said logging purposes. Upon the verdict of the jury or finding of the court, judgment shall be entered for the amount of damages awarded to said owner or owners, respectively, and to all tenants, encumbrancers, or others interested for the taking or injuriously affecting such land or property.

§ 4047g. Judgment—Parties—Others may Use Road.

Judgment shall be entered upon said verdict or finding appropriating an easement upon said land and other property for said right of way for the purpose only of logging or removing timber from the land set forth in said complaint: Provided, however, That any one or more persons owning or controlling timber land or timber and entitled to condemn such right of way under the provisions of this act may join as plaintiffs in such action. Any person condemning such right of way shall have the exclusive use thereof and the right

to remove therefrom any improvements or structures placed thereon, subject to the right of any other person or persons to condemn said logging road, chute, stream, watercourse or slough, as herein provided: Provided further, That any other party owning or controlling timber tributary to any such stream or watercourse condemned as aforesaid, and who has not joined in such condemnation, may have the right to use the same upon paying to the parties owning the right of way the proper proportion of the cost of such improvement and the expenses of maintaining the same, to be determined by the superior court of the proper county, if the parties cannot agree.

§ 4047h. Construction of Act.

This act shall be liberally construed, and the word person, as used herein, shall mean any one or more persons, firm or firms, corporation or corporations, and the words logging road or chute shall include any bridges, tramways, chutes, logging railroads, flumes or landings, whether used for logs, lumber, shingles, shingle bolts, or other timber whatsoever.

§ 4047i. Abandonment for Year Works Vacation.

When any logging road or chute, stream or watercourse, slough or lake shall cease to have been used for one year, any party interested may file a motion in such action and upon notice to the owner or person in charge of such timber, obtain an order vacating such right of way unless good cause is shown why such logging road or chute, stream, watercourse, slough, pond or lake upon such condemned right of way should not be vacated. Nothing but an easement can be acquired by this proceeding and no interest in the land shall pass by the decree of appropriation.

§ 4047j. Damages, Paid How.

The court at the time of entering the final judgment shall fix a time within which all damages and costs shall be paid, which shall not be less than twenty days except by consent of plaintiff, and may dismiss said cause for failure to make such payment as ordered.

§ 4047l. Appeal.

No appeal shall be taken from the order of the court as to the necessity of the road or chute or the route thereof until after judgment of appropriation shall be entered, but an appeal shall bring before the superior court the propriety and the necessity of such road and the route thereof and justice of the amount of damages of the parties to the appeal: Provided, That no party shall be entitled to appeal who has not contested said proceedings and taken and caused to be entered exceptions to the order, findings and judgment of the court.

§ 4047m. Construction not Delayed by.

The construction or improvement of the proposed logging road, chute or watercourse shall not be delayed by any appeal provided the amount [of] damages and costs have been paid to the clerk of the court for the use of the parties entitled thereto, and the plaintiff shall have in addition thereto entered into

a bond in such sum as the court or judge thereof shall determine, conditioned to pay any and all judgments for costs or damages that may thereafter be rendered in such proceedings, which bond shall be approved by the court or judge thereof.

All proceedings herein contemplated shall be governed by the practice in civil actions except as herein otherwise provided.

An emergency exists, and this act shall take effect immediately. [Approved Mar. 14, 1899; L. 1899, p. 255.]

§ 4063. Ferries—County may Construct, Purchase, Condemn, etc.

That any county within the state be and is hereby authorized to construct, or condemn and purchase, or purchase, operate and maintain a ferry across or wharf at any unfordable stream, lake, estuary or bay within or bordering on said county, together with all the necessary boats, grounds, roads, approaches and landings necessary or appertaining thereto, with full jurisdiction and authority to operate and maintain the same free or for toll, by and under the direction and control of the board of county commissioners of such county and as said board shall by resolution determine.

An emergency exists and this act shall take effect immediately. [Amendment, approved Mar. 6, 1899; L. 1899, p. 39.]

§ 4063. Power of county commissioners. Under Laws 1899, page 39, a county not only has power to operate a ferry, but is authorized to maintain one by leasing a ferry owned by it to private individuals: *State ex rel. v. King County*, 29 Wash. 359, 69 Pac. 1106.

The fact that a county in making a contract with private individuals to operate a ferry for a limited time agrees that the tolls to be charged shall not be fixed below a minimum sum, and that not more than seven trips per day should be required of them, would not invalidate the contract as being against public policy, on the ground that it amounts to a surrender by the county of its direction and control over the ferry, inasmuch as the limitation contained in Laws 1899, page 39, against a surrender of control merely requires the county to exercise its right of control in so far as to see that the tolls are reasonable and the service adequate: *Id.*

§ 4064. Harbors and wharves—Tide lands—Proceeds of sale—Appropriation for harbor improvements.—Laws 1891, page 405, relating to the improvement of harbors and waterways, and Laws 1895, page 527, relating to the public lands of the state and amending the former act, are not sufficiently definite to provide for an

expenditure of the moneys derived from sale of state tide lands in the way of improvements, although the acts contemplate the setting aside of seventy-five per cent of the moneys received from such sales for purposes of harbor improvements: *Tacoma Land Co. v. Young*, 18 Wash. 495, 52 Pac. 244.

The fact that one section of the act of March 16, 1897, relating to public lands of the state recognizes the existence of the tide land fund created by the act of March 10, 1891, relating to the improvement of harbors and waterways, and authorizes its disbursement, would not serve to continue such law, nor any of its provisions, in force when another section of the law of 1897 expressly repeals said law of 1891, where the section recognizing the existence of the tide land fund is not sufficient in itself to create such fund and provide for its disbursement. The provisions of Laws 1897, page 229, providing for the repeal of Laws 1891, page 405, relating to the improvement of harbors and waterways, sufficiently embraces that subject in its title, when said act of 1891 had been amended by Laws 1895, page 527, which had substantially the same title as the act of 1897, and the repealing clause of 1897 expressly included Laws 1895, page 527, within its operation: *Id.*

§ 4079. County Commissioners Authorized to Build Wharves and Landings.

The board of county commissioners of each county in this state is hereby authorized to build and maintain, when in their judgment the convenience of

the public so requires, wharves and landings on the shores of any navigable waters or watercourses within or bordering upon "their respective counties and not included within the limits of tide or shore lands of the first class." Said wharves or landings to begin at the point of termination of a county road at or near the shore of such navigable waters or watercourses, and to extend so far into said waters or watercourses as the convenience of shipping may require.

Right of Way for, Over State Lands.

In cases where the board of county commissioners shall determine to build, construct and maintain wharves or landings as aforesaid over and across tide lands of the second class owned by the state of Washington, the board of state land commissioners are hereby authorized to grant an easement to the county for so much of said tide land as may be necessary for right of way purposes: Provided, That a duly attested and sworn copy of the plat made by the county surveyor shall first be filed with the board of state land commissioners, together with a petition of the board of county commissioners setting forth the reasons for the same; and the aforesaid plat, when approved by the board of state land commissioners, shall be and form the official plat of said right of way and shall be filed in the office of the commissioner of public lands, and the said plat shall show the amount of land embraced in the proposed right of way and the location of the same relative to at least two of the corners of the public land survey.

Condemnation of.

In cases where a person or person [persons], firm or corporation has acquired a right, title or interest in and to the tide lands or other lands over which it is proposed to build, construct or maintain such wharf or landing, whether such interest be a title in fee simple or as lessee or under contract of purchase or otherwise, and the board of county commissioners shall be unable to agree with the person, persons, firm or corporation claiming such interest or title as to the compensation to be paid for the taking of such strip of tide lands or other lands, then and in that case such board of county commissioners may by an order direct proceedings to procure a right of way over said tide lands or other lands to be brought in the superior court by the county attorney in the manner provided by law, for the taking of private property for public use, and to that end are hereby authorized to institute and maintain in the name of the county the proceedings provided by the laws of this state for the appropriation of lands and other property by counties for public use.

An emergency exists and this act shall take effect immediately. [Approved Feb. 26, 1903; L. 1903, p. 20.]

§§ 4080-4089. **Tide lands—Filling of by private contract.**—Laws 1893, page 241, vest discretion in the land commissioner to determine what shall constitute the separate use for navigation, and does not require a provision in the contract itself regulating what should constitute a partial completion of the waterway capable of such separate use. The act of March 9, 1893, providing for the construction of

waterways by private contract and granting liens upon the state's tide lands, authorizes such liens to be foreclosed in the manner provided by law for the foreclosure of other liens on real estate, and consequently permits the right of redemption from such sales in the same way as prevailed under the existing statutes governing the sale and redemption of mortgaged realty; purchaser cannot question

the construction placed on such statute by the land commissioner that the gross interest due at the maturity of an annual installment is payable with the installment, which construction was included in the certificates issued by the commissioner and thereby incorporated in the contract of purchase of such lands, a purchaser is estopped to deny the obligation to pay the gross amount of interest due at the time of paying each annual installment of purchase price: *Mississippi Valley Trust Co. v. Hofus*, 20 Wash. 273, 55 Pac. 54.

The act of March 9, 1893 (Laws 1893,

p. 241), relative to the excavation of waterways by private contract through the tide and shore lands of the state and providing liens for the benefit of the contractor on such lands as he shall fill in and raise above high tide does not contemplate that the state shall retain all its tide lands until the completion of the contract of filling same, but the state retains the power of disposition of all such lands, and there is reserved to the contractor merely a lien upon the lands filled in under his contract: *Hays v. Hill*, 23 Wash. 730, 63 Pac. 576.

§ 4089a. Construction, Maintenance and Operation of Ship Canal.

That in aid of the construction, maintenance and operation of a ship canal, by the United States of America, to connect the waters of Lakes Union and Washington, in King county, with Puget Sound, together with all necessary and convenient locks, land-ways, spill-ways, buildings, power plant and other proper appurtenances, there be and hereby is granted by this state to said United States the right to place, construct, maintain, and operate, such ship canal, land-ways, spill-ways, buildings, power plant, and other proper appurtenances, upon, along, through and over any and all lands belonging to and waters of this state in said King county, within such limits as shall be defined by the plans and specifications for such improvement as the same shall be approved by the United States secretary of war, and the right to raise the waters of Salmon Bay and the right to lower the waters of Lake Washington, in prosecution of such improvement, and this state hereby releases the United States from all liability to damages to this state, its successors or assigns, that shall or might arise from such lowering or raising of waters, or otherwise from such improvement. But nothing in this act contained shall operate as an assumption of nor create any liability on the part of the state, for any damages which may result to any person, company or corporation.

An emergency exists, and this act shall take effect immediately. [Approved Feb. 8, 1901; L. 1901, p. 7.]

Supplemented by Chap. 236, Laws 1907.

§ 4089b. River Improvement Districts—How Organized.

Whenever fifty electors and resident taxpayers desire to provide for the deepening, widening, or otherwise improving the channel of any navigable river in this state or on the border thereof they may by petition propose the organization of a river improvement district under the provisions of this act; and when so organized such district shall have the powers conferred, or that may thereafter be conferred by law upon such river improvement district.

§ 4089c. Petition, to Whom—Bond—Notice—Hearing—Election.

Such petition shall first be presented to the board of county commissioners in the county in which the improvements are proposed to be made, which petition shall set forth and particularly describe the proposed boundaries of such district, and the nature, character and extent of the proposed improvements, and shall pray that the same may be organized under the provisions of this act. The

petitioners must accompany the petition with a good and sufficient bond, to be approved by the commissioners, in double the amount of the probable cost of organizing such district, conditioned that the bondsmen will pay all of the costs in case such organization shall not be effected. Such petition shall be presented at a regular meeting of the said board of commissioners and shall be published for at least two weeks before the time at which the same is to be presented, in some newspaper printed and published in the county where said petition is presented, together with a notice stating the time of meeting at which the same will be presented. When such petition is presented the said board of commissioners shall hear the same, and may adjourn such hearing from time to time, not exceeding four weeks in all; and on the final hearing may make such changes in the proposed boundaries as they may find proper, and shall establish and define such boundaries. Said board of commissioners shall then order an election to be held in such proposed district for the purpose of determining whether or not the same shall be organized under the provisions of this act, and for the election of a board of directors consisting of five members. Said board of commissioners shall cause notice to be given of such election. The notice shall describe the boundaries so established, the character, nature and extent of the proposed improvements, and the election of five directors to serve until their successors are elected and qualified, and shall designate a name for such proposed district, and the notice shall be published for at least three weeks prior to such election in a newspaper published in said county and having a general circulation in the proposed district. Such notice shall require the electors to cast ballots which shall contain the words "River Improvement District—Yes," and "River Improvement District—No," or words equivalent thereto; and to vote for five persons to constitute the board of directors.

§ 4089d. Election—How Conducted.

Such election shall be conducted in accordance with the general election laws of the state, except that no particular form of ballot shall be required. The voting precincts shall be the same unless changed by the commissioners.

§ 4089e. Who may Vote.

No person shall be entitled to vote at any election held under the provisions of this act, unless he is a qualified elector of the district and possesses all the qualifications required of electors under the laws of the state.

§ 4089f. Canvass of Vote.

The board of county commissioners shall meet on the first Monday next succeeding such election and proceed to canvass the votes cast thereat; and if upon such canvass it appear that at least a majority of all votes cast are "River Improvement District—Yes," the said board shall, by an order entered in their minutes, declare such territory duly organized as a "River Improvement District" under the name and style theretofore designated, and shall declare the five persons receiving respectively the highest number of votes for directors, to be duly elected directors. From the making of such order the organization of such district shall be complete, and the board of directors elected at such election shall be entitled to enter upon the duties of their office upon their taking and

subscribing to an oath that they will faithfully and impartially and to the best of their ability perform the duties of directors of said district.

§ 4089g. Board of Directors—Term of Office.

The board of directors elected at the first election held under the provisions of this act, shall hold office until the second Monday in January the year succeeding the January next succeeding their election, and until their successors are elected and qualified.

§ 4089h. Biennial Election—Voting Precincts—Law Governing Election.

Biennial elections for the election of a board of directors shall be held on the second Tuesday of December. The board of directors shall prescribe voting precincts for such elections. The general law governing the election of officers of cities of the third class as far as applicable shall be followed in the election of directors. The polls shall be opened at one o'clock P. M. and closed at six o'clock P. M. The form of ballot prescribed by the general law need not be adopted. The returns of the election shall be delivered to the secretary of the board. The board of directors shall meet on the first Monday following the election and canvass the returns, and declare the result of the election.

§ 4089i. Term of Office—Who Eligible.

The board of directors elected at the biennial election shall hold office for two years from the second Monday in January next succeeding their election and until the election and qualification of their successors. Before entering upon the duties of their office the directors shall take and subscribe to an oath that they will faithfully and impartially and to the best of their ability perform the duties of directors of said district.

§ 4089j. Eligibility of Directors—Vacancies.

None but qualified electors residing within the said district shall be eligible to hold the office of director. In case of a vacancy in the membership of the board of directors, such vacancy shall be filled by appointment by the remaining members of the board, and such appointee shall hold the office until the next general election for the election of directors and until his successor is elected and qualified.

§ 4089k. Meetings.

The board of directors elected at the first election held under the provisions of this act shall meet on the second Monday following the election and organize the said board, elect a president from their number, and appoint a secretary who shall hold his respective office during the pleasure of the board of directors.

§ 4089l. Duties and Powers of Directors.

The board of directors shall consist of five members, and they shall have power and it shall be their duty to manage and conduct the business and affairs of the district, make and execute all necessary contracts, employ such agents, officers and employees as may be required, and make and adopt such rules and by-laws as may be deemed necessary for carrying into effect the provisions of this act.

§ 4089m. Regular and Special Meetings of Directors.

Regular meetings of the board shall be held at such times as the board may designate. Special meetings may be held whenever a majority of the board deems it advisable, but no special meeting shall be held unless personal notice is given to all the members of the board of the time and place of meeting. All meetings of the board must be public, and three members shall constitute a quorum for the transaction of business, but on all questions requiring a vote, there shall be a concurrence of at least three members of said board.

§ 4089n. Powers of Directors.

For the purpose of carrying into effect the provisions of this act, the board of directors are empowered to levy a tax upon the taxable property within the district, in the manner hereinafter provided, and they are authorized when directed by a vote of the people of the district in the manner hereinafter specified to sell the bonds of the district to raise funds to carry on the work. The money derived from the sale of bonds shall be used exclusively in making public improvements for the benefit of the people of the district, said improvements to consist of deepening, widening or otherwise improving the channel of any navigable river within or adjacent to any district organized under the provisions of this act and to be for the purpose of extending and aiding navigation and commerce on such river in the interest and for the benefit of the people in such district.

§ 4089o. Bonds—How and When Issued.

Whenever the board of directors deem it necessary or expedient to raise money for the purposes specified in section 13 of this act, they shall call a special election to determine whether the district shall issue bonds. At such election there shall be submitted to the electors of said district possessing the qualifications prescribed in this act the question whether or not the bonds of said district in the amount so determined shall be issued. Notice of such election must be given by posting notices in three public places in each precinct in said district for at least twenty days, and also by publication of such notice in some newspaper published in the county where the district is situated and having a general circulation therein, for at least three successive weeks. Such notice must specify the time of holding the election and the amount of bonds proposed to be issued. Said election must be held and the result thereof determined and declared in all respects as nearly as practicable in conformity with the provisions of this act applicable to the holding of elections for the election of directors: Provided, That no informality in conducting such election shall invalidate the same, if the election shall have been otherwise fairly conducted. At such election the ballots shall contain the words "Bonds, Yes" and "Bonds, No," or words equivalent thereto. If a majority of the votes cast are "Bonds, Yes," the board may then issue bonds in the amount authorized. If the majority of the votes cast are "Bonds, no," the result shall be entered in the records of the board, but no bonds shall be issued unless a majority vote is cast in favor of such issuance. Whenever thereafter said board, in its judgment, deems it for the best interests of the district that the question of the issuance of bonds for said amount or any amounts shall be submitted to said electors, it

shall so declare said record in its minutes and may thereupon submit such questions to said electors in the same manner and with like effect as at such previous election. Said bonds shall be payable in gold coin of the United States and shall be issued in denominations of not less than one hundred or more than one thousand dollars, shall be numbered from one up consecutively, shall bear the date of their issue, shall be payable not more than twenty years from date, and redeemable at any time after the expiration of ten years; shall bear interest not exceeding six per cent per annum, payable semi-annually, with interest coupons attached, and the principal and interest shall be payable at such place as may be designated in such bonds. The bonds and each coupon shall be signed by the president of the board and attested by the secretary of the board. Said bonds shall express upon their face that they were issued by authority of this act, stating its title and date of approval, and shall also state the number of the issue of which such bonds are a part. The secretary shall keep a record of the bonds sold, their number, the date of sale, the price received, and the name of the purchaser.

§ 4089p. Sale of.

The board may sell the bonds authorized to be issued, from time to time, in such quantities as may be necessary and most advantageous to raise money for the purpose mentioned in section 13 of this act. The board shall at a meeting, by resolution, declare its intention to sell a specified amount of bonds and the day and hour and place of sale, and shall cause publication thereof at least twenty days in such newspapers as they may deem most advantageous. The notice shall state that sealed proposals will be received by the board at their office, for the purchase of the bonds, till the day and hour named in the resolution. At the time appointed the board shall open the proposals and award the purchase of the bonds to the highest responsible bidder, and may reject all bids. Provided, however, That the board shall have the right to sell such bonds, or any of them, at private sale whenever they deem it for the best interest of the district so to do. Provided, further, That such bonds shall not be sold for less than their face value.

§ 4089q. How Paid.

Said bonds and interest thereon shall be paid by revenue derived from any annual assessment upon all the taxable property of the district, and all taxable property within the district shall be and remain liable to be assessed for such payments as hereinafter provided.

§ 4089r. Limit of Debt.

The total indebtedness authorized to be incurred under the provisions of this act shall never exceed two and one-half per cent of the taxable property within the district as ascertained by the last assessment for state and county purposes, and any debts contracted in excess of such limitation shall be invalid and void.

§ 4089s. Sinking Fund—How Created.

Five years before said bonds shall become due the directors of the district are authorized and required annually to levy an assessment sufficient to liquidate

said bonds at maturity, such assessment shall be levied and collected as other taxes authorized by this act are collected, but the money arising therefrom shall be retained by the county treasurer until the maturity of bonds. Whenever the treasurer has upon hand two thousand dollars of the special fund for the payment of said bonds, he shall notify the holders of such bonds for the presentation to him of the bonds issued under the provisions of this act as he may be able to pay with the funds in his hands, to be paid in numerical order of said bonds, beginning with number one, until all of said bonds are paid: Provided, That thirty days after the giving of such notice if said bonds are not presented the interest thereon shall cease.

§ 4089t. Interest Payments Provided for.

It shall be the duty of the directors annually to levy an assessment sufficient for the payment of interest coupons hereinbefore mentioned as they fall due.

§ 4089u. Interest and Sinking Fund.

The board of directors shall determine the amount to be raised to pay the interest on the bonds outstanding, and whatever sum the board deems advisable to raise for the purpose mentioned in section 13 of this act, and when necessary to provide for a sinking fund and shall determine the rate necessary to raise such sums based upon the totals of the taxable property within the district as equalized and determined by the county board of equalization. The rate so determined shall be certified to the county auditor of the county in which the district is located, and by him extended upon the tax-rolls of the county, in a separate column. The rate so determined shall in no event exceed two and one-half mills on the dollar on the taxable property within the district for any one year. The auditor shall certify the same to the county treasurer as other taxes are certified, and the treasurer shall collect the taxes, keeping them separate from other taxes, and shall pay therefrom said interest coupons as they mature and said bonds as they may be called.

§ 4089v. Assessments and Collection Governed by General Laws.

All of the laws governing the assessment and collection of taxes for general state and county purposes shall apply to the assessment and collection of taxes levied under the provisions of this act, except that the taxes collected under the provisions of this act shall be kept separate, and separate certificates of delinquency issued. The certificate of delinquency issued for delinquent taxes levied under this act may be foreclosed as other certificates, and the general law applicable thereto shall govern the certificates issued for taxes delinquent under this act.

§ 4089w. No Salaries to Directors—Not to be Interested in Contracts—Penalty.

The board of directors shall receive no salary for services performed under the provisions of this act, nor shall they be interested directly or indirectly in any contract awarded or to be awarded by the board, or in the profits to be derived therefrom; and for any violation of this provision, such officers shall be deemed guilty of a misdemeanor and such conviction shall work a forfeiture of

his office, and he shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment, and the said contract in which said director was interested shall be void.

An emergency exists and this act shall take effect immediately. [Approved Mar. 16, 1903; L. 1903, p. 270.]

§ 4091. Watercourses—Riparian rights—When attach—Appropriation of water.— While the doctrine of prior appropriation of water on the public lands obtains in this state, yet it in no way interferes with the rule of the common law as to the right of a riparian owner to be protected in the use and enjoyment of the water naturally flowing by or over his land, as against subsequent appropriation of the water for irrigation or other purposes. For the purpose of protection of the riparian rights of a grantee of the government, as against subsequent appropriation of the water flowing over his land, his title relates back to the first act necessary on his part in the proceedings to acquire title. The act of the territorial legislature of 1873, regulating irrigation and water rights in Yakima county, and providing for appropriation of the water

of streams for irrigation is not applicable in cases where riparian rights had attached prior to its passage, as the doctrine of appropriation applies only to public lands: *Benton v. Johncox*, 17 Wash. 277, 61 Am. St. Rep. 912, 49 Pac. 495.

In an action by one entitled under General Statutes, title 20, chapter 1, to appropriate water in a flowing stream for manufacturing purposes, to restrain defendant from interfering with the free and unobstructed flow of the water so appropriated, an affirmative defense is demurrable, which sets up that defendant claims the ownership and use of such water by reason of a prior homestead entry, but which fails to allege that defendant is making any beneficial use of the water diverted by him from the stream: *Northport Brewing Co. v. Perrot*, 22 Wash. 243, 60 Pac. 403.

§ 4117a. Water Rights—Artesian Wells.

It shall be unlawful for any person, firm, corporation or company having possession or control of any artesian well within the state, whether as contractor, owner, lessee, agent or manager, to allow or permit water to flow or escape from such well between the first day of October in any year and the first day of April next ensuing: Provided, That this act shall only apply to sections and communities wherein the use of water for the purpose of irrigation is necessary or customary: And providing further, That nothing herein contained shall prevent or prohibit the use of water from any such well between said first day of October and the first day of April next ensuing, for household, stock and domestic purposes only, water for said last named purposes to be taken from such well through a one-half inch stop and waste cock to be inserted in the piping of such well for that purpose.

§ 4117b. Flow Restricted—Duty of Owner.

It shall be the duty of every person, firm, corporation or company having possession or control of any artesian well, as provided in section one of this act, to securely cap the same over on or before the first day of October in each and every year in such manner as to prevent the flow or escape of water therefrom, and to keep the same securely capped and prevent the flow or escape of water therefrom until the first day of April next ensuing: Provided, however, It shall and may be lawful for any such person, firm, corporation or company to insert a one-half inch stop and waste cock in the piping of such well, and to take and use water therefrom through such stop and waste cock at any time for household, stock or domestic purposes, but not otherwise.

§ 4117c. Penalties.

Any person whether as owner, lessee, agent or manager having possession or control of any such well, violating the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined in any sum not exceeding two hundred dollars for each and every such offense, and the further sum of two hundred dollars for each ten days during which such violation shall continue.

§ 4117d. Rights of Adjacent Proprietors.

Whenever any person, firm, corporation or company in possession or control of an artesian well shall fail to comply with the provisions of this act, any person, firm, corporation or company lawfully in the possession of land situate adjacent to or in the vicinity or neighborhood of such well and within five miles thereof may enter upon the land upon which such well is situate, and take possession of such from which water is allowed to flow or escape in violation of the provisions of section 1 of this act, and cap such well and shut in and secure the flow or escape of water therefrom, and the necessary expenses incurred in so doing shall constitute a lien upon said well, and a sufficient quantity of land surrounding the same for the convenient use and operation thereof, which lien may be foreclosed in a civil action in any court of competent jurisdiction, and the court in any such case shall allow the plaintiff a reasonable attorney's fee to be taxed as a part of the cost. This shall be in addition to the penalty provided for in section 3 of this act. [Approved Mar. 16, 1901; L. 1901, p. 259.]

§ 4125. Irrigation—Commissioner of Irrigation—Water Districts—Salary of Commissioner.

Each county in this state shall be constituted an irrigation district, and for each of said districts a commissioner may be appointed by the county commissioners, whose salary, in each district, shall be fixed each year by the board of county commissioners in each county, which said commissioner shall hold his office from the first Monday in June of each year for a period of one year, and shall be paid out of the county funds in each county, monthly: Provided, That when twelve freeholders of any county, who are irrigating lands in said county from any of the natural watercourses, streams or lakes in said county, shall petition the board of county commissioners to appoint a water commissioner for such county, it shall become the duty of such county commissioners to, and they shall, upon such petition, appoint a water commissioner. [Amendment, approved Mar. 7, 1903; L. 1903, p. 65.]

§ 4165a. Measuring Boxes—Gates—Repairs.

It shall be the duty of every person entitled to the use of the waters of any natural stream or lake within this state for irrigation, stock or domestic purposes under a decree or judgment of any court of competent jurisdiction to place and keep in repair at the head of the ditch or canal through which such waters are diverted by him a suitable headgate and measuring box so constructed as to enable the officer executing such judgment or decree to measure to such person the quantity of water to which he is entitled by virtue thereof.

Any person who shall willfully fail, neglect or refuse to place and keep in repair the headgate and measuring box provided for in section 1 of this act

shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not less than twenty nor more than one hundred dollars. [Approved Feb. 28, 1901; L. 1901, p. 27.]

§ 4165b. Providing for Enforcement of Decree of Court Regulating the Use of Water for Irrigation, Stock and Domestic Purposes.

That in all cases where a decree has been or may be rendered by any superior court of this state or by the supreme court thereof determining and fixing the rights of persons to use the waters of any of the streams of this state for irrigation, stock or domestic purposes, it shall be the duty of the sheriff of the county wherein said waters are so used to enforce such decree and to measure and distribute such waters among the persons entitled to the use thereof in accordance with the provisions of said decree: Provided, however, That such sheriff or his deputies shall only so act either when directed by the court or upon the written request of three or more persons entitled to use said waters under the terms of such decree.

The sheriff and his deputies shall be allowed and paid all traveling and other necessary expenses incurred under the provisions of this act, from the general county fund, to be audited and allowed by the board of county commissioners of the proper county.

All acts or parts of acts in conflict herewith are hereby repealed. [Approved Feb. 28, 1901; L. 1901, p. 33.]

§ 4165c. Relating to Right of Way for Ditches, Canals and Flumes.

Use of Water—Appropriation—Ditches—Rights of Way.

That any person, corporation or association of persons is entitled to take from the natural streams or lakes in this state water for the purposes of irrigation and mining, not theretofore appropriated or subject to rights existing at the time of the adoption of the constitution of this state, subject to the conditions and regulations imposed by law: Provided, That the use of water at all times shall be deemed a public use, and subject to condemnation as may from time to time be provided for by the legislature of this state.

Riparian Owners.

All persons who claim, own or hold possessory right or title to any land, or parcel of land or mining claim within the boundaries of the state of Washington, when such lands, mining claims or any part of the same are on the banks of any natural stream of water, shall be entitled to the use of any water of said stream not otherwise appropriated for the purposes of mining and irrigation to the full extent of the soil for agricultural purposes.

Nonriparian Owners.

When any person owning claims, lands or mining claims as specified in the foregoing section, is not a riparian proprietor or being such has not sufficient frontage on said stream, lake, artificial stream, ditch or reservoir, to obtain a sufficient flow of water to irrigate his land or use on his mining claim, he shall be entitled to the right of way through the farms or tracts of lands or other mining claims which lie between him and said stream, lake, artificial stream,

ditch or reservoir, or the farms, tracts of lands or mining claims which lie above and below him on said stream, lake, artificial stream, ditch or reservoir.

Extent of Right of Way.

Such right of way shall extend only to a ditch sufficient for the purpose required, together with the right of ingress and egress to construct, maintain and repair the same; and whenever any person or persons find it necessary to convey water for the purposes of irrigation or mining through the improved or occupied lands of another, he or they shall select for the line of such ditch through such property the shortest and most direct route practicable upon which can be constructed with uniform or nearly uniform grade, and discharging the water at a point where it can be conveyed to and used upon the land or lands or mining claim of the person or persons constructing such ditch, canal or works.

Power to Condemn—Proceedings in.

Upon the refusal of the owner of the lands, lessees or those in possession, through which it is proposed to run said canal, ditch or works to permit the passage of the same through their property the person or persons desiring the right of way for such ditch canal or works may proceed to condemn and take the right of way therefor, as hereinafter provided.

Complaint—Summons—Judgment.

In case of the refusal of the owners or claimants of any lands or mining claims through which such ditch, canal or other works are proposed to be made or constructed, to allow the right of way or the passage thereof, the persons, company or corporation desiring the right of way shall file in the superior court of the county, a complaint describing the land or mining claim to be crossed, the size of the ditch, canal or works, the quantity of land required to be taken and the value of the land and damages to the property, setting forth the names of the owners or reputed owners or parties interested in the lands to be crossed, and praying that the right of way be granted. A summons shall issue and be served on all parties interested, as in all other cases of civil nature. In case the defendant fails to appear the court shall when the cause shall come on to be heard, impanel a jury in the cause, and they shall determine the value of the land occupied by said ditch, canal or works and the damages, and, upon the return of the verdict, the court shall enter a decree, directing that the right of way for the ditch, canal or works be established according to the description in the complaint, and that the plaintiff shall pay to the clerk of the court the full amount of the value of the land and damages found by the jury, before the plaintiff shall begin work on said ditch, canal or works.

Jury to Determine Value of Land.

That whenever the defendant shall appear in the cause, he shall allege in his answer the value of the land proposed to be used by said ditch, canal or works, and the jury shall determine the value and the proceedings shall be had as in the preceding section: Provided, That plaintiff shall not be required to reply to the answer of the defendant, but the sole issue to be determined by the jury shall be the value of the land to be occupied by said ditch, canal or works, and the damages thereto.

Defining Terms.

The word person, whenever used in this act, shall be construed to mean either a natural person, an association, or corporation, and the word he shall be construed to mean she, it, or they, and the word ditch shall be construed to include and mean dike, flumeway and irrigating canal.

Construction of Act.

The provisions of this act shall be liberally construed so that the ultimate object and the intent of this act shall be fully carried out. [Approved Mar. 14, 1899; L. 1899, p. 261.]

§ 4166. **Irrigation districts—Bonds for.**
This act was held not to violate the provisions of section 1 of the fourteenth amendment to the constitution of the United States, by depriving persons of property without due process of law: *Kinkade v. Witherop*, 29 Wash. 11, 69 Pac. 399.

§ 4176. **Powers of board of directors.—**
The board has power to make an agreement with a contractor that a contract lawfully entered into by them for the construction of an irrigating ditch may be annulled and work thereunder suspended: *Dyer v. Middle Kittitas Irr. Dist.*, 25 Wash. 80, 64 Pac. 1009.

§ 4245a. **Dissolution of Irrigation Districts.**

Any irrigation district organized and existing under the laws of the state of Washington may be dissolved and its indebtedness liquidated in the manner in this act provided.

§ 4245b. **Bondholder's Consent.**

If there are bonds of such district outstanding, the written consent of at least two-thirds in amount of the holders of all such bonds must be filed with the county auditor of the county in which such district is situated, consenting to such dissolution, which consent shall be acknowledged before some officer authorized by the laws of this state to take the acknowledgment of deeds, and recorded in the records of deeds of said county.

§ 4245c. **Signing of Petition.**

Whenever the consent of two-thirds in amount of such bondholders has been filed, as in this act provided, a petition signed by at least one-third of the freeholders in said district, who shall be qualified electors thereof, reciting the fact that said consent has been filed, and praying that said district be dissolved under the provisions of this act, shall be delivered to the county auditor of such county.

§ 4246a. **Petition—Election.**

Upon the filing of the written consent of the bondholders and the petition signed by the qualified electors, as provided in the last two sections, it shall be the duty of the board of county commissioners of such county at their next regular session, or at that time, if then in session, to call an election for the purpose of submitting to the voters of said district the question whether the district shall be dissolved under the provisions of this act. Such election shall be held upon like notice and conducted in like manner, as other elections under the irrigation district laws of this state, and the form of the ballot shall be "For dissolution—Yes," "For dissolution—No," and no person not a qualified elector under the general election laws of this state and a freeholder residing within said district shall be deemed a qualified elector under the provisions of this act.

§ 4246b. Officers to Conduct Election.

Said board of county commissioners, at the time of calling such election, shall designate and appoint the proper officers to conduct the same, and shall direct the county auditor to sign and post notices of such election for the time and in the manner in said election district laws provided.

§ 4248a. Election Returns—Filing of District Records.

The officers conducting such election shall make returns thereof to the county auditor of the county in which such district is situated within ten days after such election, and the board of county commissioners of said county shall at the first meeting to be held thereafter canvass the vote of such election, and if a majority of the voters voting thereat shall vote in favor of dissolution it shall be the duty of all officers and persons having in their possession any of the books, records, documents, or proceedings appertaining to such district, to deliver the same, on demand, to the county auditor of the county in which such district is situated.

§ 4248b. Auditor's Duty.

As soon as such books and other records and proceedings shall come into the possession of such county auditor it shall be his duty forthwith to certify under his hand and seal, and deliver to the county clerk of his county, a transcript of the proceedings before the board of county commissioners, and shall accompany the same with a statement of all indebtedness against said district so far as the same appears on the books and records of the same.

§ 4248c. Proceedings in Court.

Upon the filing of such statement and certificate the clerk shall docket the proceedings entitled "In the matter of the dissolution of ——— irrigation district," and the superior court shall thereupon make an order directing the clerk to give notice that such statement has been filed in his office, which notice shall continue [contain] a general statement of the nature of the proceedings, and shall notify all persons having claims against said district to present the same for allowance and approval on or before a day in such notice to be specified. And all claims not presented and filed in said court on or before such date shall be forever barred. Such notice shall be published in some newspaper published in said county once a week for at least six weeks immediately preceding the date fixed for such hearing.

§ 4248d. Validity of Claims—Appeal.

At the time fixed for such hearing, or at any other time to which such hearing may be adjourned, if satisfied that the provisions of this act have been complied with, the court shall proceed to determine the validity of all claims and demands against said district, together with the amount thereof. No claim or debt which is barred by the statute of limitations shall be approved or allowed. Such irrigation district, or any other person deeming himself aggrieved by the final judgment allowing or rejecting any claim, may appeal to the supreme court within ten days from the entry of such final judgment, but not thereafter.

§ 4248e. Sale of District Property.

If no appeal be taken from such judgment or if the judgment appealed from

be affirmed, the court shall thereupon appoint a master who shall forthwith give notice that the property of the district, its rights and franchises, will be sold pursuant to an order of the court directing such sale: Provided, however, That such sale shall not include any property within said district which has been sold for taxes or other assessments in said district. A certified copy of such order shall be delivered to such master as his authority in the premises. Such notice of sale shall be given in like manner and for the same time as a notice of sale of real property on execution, except that it shall not be deemed necessary to post any copy of such notice. Said sale shall be made at public auction at the front door of the courthouse in such county, and may be adjourned from time to time, not exceeding three weeks in all, by public proclamation made at the time and place of sale, or the time from which the same may have been previously adjourned. Such master is authorized to receive in payment of the purchase price any securities or obligations of such district, the validity of which has been established by the previous judgment of the court, as herein provided; such securities or obligations to be accepted at their face value, and no bids shall be accepted, and no sale of said property shall be made for a less sum than the amount of bonded indebtedness of such district, including all accrued interest.

§ 4248f. Report of Sale—Confirmation—Conveyance.

Said master shall thereupon make return of his proceedings and file the same with the clerk of the court, and if the court is satisfied that such sale was fairly conducted, it shall make an order confirming and approving the same, and upon such confirmation such master shall execute and forthwith deliver to the purchaser or purchasers at said sale a good and sufficient deed of conveyance, and such deed, when so executed, shall be operative, and shall convey to the purchaser at said sale the property, rights, franchises and privileges of such district, as hereinbefore described, clear and free from any claim or lien in favor of such district or its creditors, and shall entitle the purchaser to the immediate possession of the property so purchased.

§ 4248g. Levy of Tax to Pay Debts, Other than Bonds.

As soon as such sale is made and confirmed, it shall become the duty of the board of county commissioners of the county in which the district is situated, to levy an assessment for the purpose of liquidating all outstanding indebtedness of such district, exclusive of the bonded indebtedness herein provided, on all the property within the district, subject to assessment under the general irrigation district laws of the state, which indebtedness shall be ascertained by reference to the judgment of the court as herein provided. In levying such assessments the board of county commissioners shall be governed as near as may be by the general irrigation district laws, except as herein otherwise provided. The county assessor shall, under the direction of the board of county commissioners, prepare an assessment-roll of the lands in said district from the last assessment-roll of the county, for state and county taxes. The board of county commissioners shall equalize the same, after giving like notice and in like manner as the board of directors of irrigation districts are required to do. The

county auditor shall perform the same duties as are now devolved by law on the secretary of irrigation districts, and the county treasurer shall be ex-officio treasurer and collector thereof. In all other respects such tax shall be collected as under the general irrigation district laws of the state.

§ 4248h. Judgment of Dissolution.

As soon as the sale is confirmed as herein provided, the court shall make an order dissolving the irrigation district, a certified copy of which shall be recorded in the office of the county auditor of the county in which such district is situated; and from and after the filing of such order said district shall cease to exist, except for the purpose of the collection of its indebtedness; and all papers, records and proceedings appertaining to the same shall be turned over to the county auditor of the proper county, and all bonds and other obligations of the district shall be canceled as soon as paid. [Approved Mar. 18, 1899; L. 1899, p. 164.]

§ 4250. Subscription of stock before beginning business.—The provisions of General Statutes, title 18, chapter 1, requiring all the capital stock of a corporation to be subscribed before it is authorized to transact business, does not apply to corporations, either foreign or domestic, engaged exclusively in loaning money upon real estate. The mere fact that a corporation had power under its articles to engage in other business than that of loaning money would not deprive it of the right to do business before the whole amount of its capital stock had been subscribed, if, in fact, its business was confined to the loaning of money upon real estate: *Brown v. Elwell*, 17 Wash. 442, 49 Pac. 1068.

§ 4253. Insolvent corporations—Preferences—Mortgages.—A mortgage given by an insolvent corporation must be held to be a fraudulent preference, although given for an antecedent loan: *Biddle Purchasing Co. v. Port Townsend Steel Wire etc. Co.*, 16 Wash. 681, 48 Pac. 407.

Although a mortgage is given by an insolvent corporation to a creditor, who has knowledge of its insolvency, with the intention and expectation that the corporation will, by means of an extension of time of payment thus secured, be enabled to continue business and eventually pay off its indebtedness, the mortgage constitutes a preference voidable at the instance of either existing or subsequent creditors, under the rule that the property of an insolvent corporation is a trust fund for the benefit of all creditors: *Cook v. Moody*, 18 Wash. 114, 63 Am. St. Rep. 872, 50 Pac. 1020.

A chattel mortgage given by an insolvent corporation to a creditor for the purpose of preferring the mortgagee over other creditors is void: *Van Brocklin v. Queen City Printing Co.*, 19 Wash. 552, 53 Pac. 822.

See *Strohl v. Seattle Nat. Bank*, 25 Wash. 28, 64 Pac. 916, as to evidence of insolvency.

Powers to sell and mortgage.—Although corporations in this state have power under General Statutes, section 1500, to mortgage real and personal property, such power must be confined within the purposes for which the corporation was created, and does not authorize corporations to mortgage their property to secure the debt of any, or all, of its stockholders, to the injury of its creditors: *Washington Mill Co. v. Sprague Lumber Co.*, 19 Wash. 165, 52 Pac. 1067.

A pledge of collateral security, given by an insolvent corporation to secure a pre-existing indebtedness, constitutes a fraudulent preference as to other creditors, where the secured creditor had knowledge, or, from his relations with the insolvent corporation, must be presumed to have had notice, of its condition: *Burrell v. Bennett*, 20 Wash. 644, 56 Pac. 375.

Power to sell franchise.—The rule that a quasi public corporation cannot assign its corporate privileges and franchises without legislative assent, does not apply to assignments of franchises granted by a city to a corporation, as such franchises or privileges belong to the class of property that may, under General Statutes, section 1500, be bought, held, mortgaged, sold and conveyed by corporations organized in accordance with the laws of the state: *Commercial Electric Co. v. Tacoma*, 17 Wash. 662, 50 Pac. 592.

§ 4255. Powers how exercised.—An order of the board of directors of a corporation authorizing its president and secretary to sign its name as surety upon a bond for a given sum, would raise the presumption that the authority given was merely to execute a bond providing for a penalty instead of one providing for liquidated damages: *Roberts v. Washington Water P. Co.*, 19 Wash. 392, 53 Pac. 664.

Board of directors—Vacancies.—Trustees of a corporation elected by a minority of the trustees to fill vacancies in their board are de facto officers, and, where they have entered peaceably into the possession of office, their acts as such officers, within the scope of the corporation's ordinary business, cannot be questioned by strangers: *Baggot v. Turner*, 21 Wash. 339, 58 Pac. 212.

Ballinger's Code, section 4255, must be construed, in view of all the other provisions of the same chapter governing the manner of voting shares of stock, and in the absence of any by-law making a different provision, as requiring a vote of two-thirds of the shares of stock, instead of two-thirds of the stockholders, in order to expel a trustee from office: *State v. Horan*, 22 Wash. 197, 60 Pac. 135.

§ 4257. **Powers of trustees.**—The action of a majority of a board of trustees is voidable upon the complaint of a stockholder, where the vote of a trustee interested adversely to the corporation was necessary to effect such action; and Ballinger's Code, section 4257, is inapplicable in such cases, since the policy of the law forbids a trustee to assume a double function where there are adverse interests to be considered: *Parsons v. Tacoma Smelting etc. Co.*, 25 Wash. 492, 65 Pac. 765.

§ 4262. **Stock—Sale under by-laws.**—General Statutes, section 1507, providing for the forfeiture and sale of corporate stock for default in payment of assessments, does not give a corporation a lien on its capital stock for debts due from its stockholders.

When no by-laws.—Under the provisions of the statute (Gen. Stats., § 1507), that the sale of shares of stock for nonpayment of assessments shall be made as prescribed in the by-laws of the corporation, the corporation has no power to sell when it has made no provision therefor in its by-laws; and the only remedy of the corporation, in such case, would be an action at law to recover the amount due.

Pledge and sale.—In case of a pledge of shares of corporate stock, the proper remedy, for a corporation seeking to enforce the pledgor's liability on his stock subscription, is to obtain judgment against him upon his refusal to pay and sell his shares of stock upon execution, subject to the lien of the pledgee: *Dearborn v. Washington Sav. Bank*, 18 Wash. 8, 50 Pac. 575.

Interest on subscriptions to.—Interest is not chargeable upon a promissory note given in payment of a stock subscription, although payment is not made until after the date named in the note, if there is no

contract to pay interest and no call for the payment of stock subscriptions has been made by the corporation; but, interest is chargeable upon a loan of cash by a corporation to a stockholder, although there may be in the corporate treasury at the time funds in the nature of undeclared dividends more than enough to offset the sum due upon the loan: *Seattle Trust Co. v. Pitner*, 18 Wash. 401, 51 Pac. 1048.

§ 4264. **Pledge of stock—By delivery.**—A corporation which pays off shares of stock to the holder thereof as shown on its books, without the return of the certificate issued to him, does so at its peril, since, under Ballinger's Code, section 4264, which provides that any stockholder may pledge his stock by a delivery of the certificate, but may, nevertheless, represent the same at all meetings and vote as a stockholder, it is unnecessary for the pledgee to notify the corporation of the pledge nor contemplated by the statute that the pledge be shown on the corporate books by a transfer of the stock: *Brown v. Savings etc. Assn.*, 28 Wash. 657, 69 Pac. 383.

A pledgee of shares of stock in a building and loan association, which have been called in, paid off, and canceled without notice to him or a demand for the surrender of the certificate held by him in pledge, has a right of action against the association for the damages suffered by him in consequence of the destruction or conversion of such shares: *Id.*

Where a building and loan association has a defense against the original holder of a certificate of stock issued by it, a pledgee of such certificate, who has a right of action for damages against the corporation for the conversion or destruction of such shares, is entitled to recover only the amount due him from the pledgor, with interest accrued and accruing thereon at the contract rate; and his measure of recovery would not be the full value of the stock at the date of conversion, unless his actual damage was equal thereto: *Id.*

§ 4266. **Banking—Priority of debts.**—When a corporation, which is authorized under the laws of this state to engage in banking and also in other distinct lines of corporate business, becomes insolvent, corporate assets, realized from the collection from stockholders of sums due under their statutory liability as shareholders in a banking corporation, should be applied in satisfaction of claims against the corporation arising out of its transaction of banking business, to the exclusion of other creditors: *Kiggins v. Munday*, 19 Wash. 233, 52 Pac. 855.

§ 4271. Capital Stock—How Decreased, or Increased.

Any company incorporated under this chapter may, by complying with the provisions herein contained, increase or diminish its capital stock to any amount

which may be deemed sufficient and proper for the purposes of the corporation; but before any corporation shall be entitled to diminish the amount of its capital stock, if the amount of its debts and liabilities shall exceed the sum to which the capital is proposed to be diminished, such amount shall be satisfied and reduced so as not to exceed the diminished amount of the capital: Provided, That the deposits in any trust company or banking corporation shall not be included in ascertaining the debts and liabilities of such trust company or banking corporation for the purposes of this section: Provided, further, That this act shall not relieve such trust company or banking corporation or the stockholders of any such trust company or banking corporation from liability, although contingent, or remote, incurred or entered into by such trust company or banking corporation prior to the reduction of its capital including liability for deposits: Provided, further, That before any banking corporation, or trust company, can reduce its capitalization, a notice, in writing, must be mailed to the last known postoffice address of its depositors setting forth the fact that the said banking corporation, or trust company, intends to decrease its capitalization, showing the amount of its capitalization and the amount to which it intends to decrease same; and proof of the mailing of such notices shall be made by affidavit of the party mailing the same, showing the names and addresses of the persons to whom mailed. [Amendment, approved Mar. 13, 1899; L. 1899, p. 174; to take effect immediately.]

§ 4274. Powers of trustees upon dissolution.—The fact that a corporation was insolvent and had determined at a meeting of its stockholders to discontinue business and distribute its assets among its creditors would not be sufficient under Ballinger's Code, section 4274, to authorize its trustees at that time to act as trustees of the creditors and stockholders, to the exclusion of a receiver, since that power and authority is given to the trustees only when the corporation is dissolved under the provisions of sec-

tion 4275, which require the presentment of a petition therefor to the superior judge of the county, and a hearing by him after publication of notice of the petition for eight weeks, when an order of dissolution may be entered, if the judge is satisfied that all preliminary steps therefor have been taken as prescribed by the statute, and that all claims against the corporation have been discharged: *New York Bank v. Metropolitan Bank*, 28 Wash. 553, 68 Pac. 905.

§ 4280a. For the Protection of Stockholders in Mining Companies.

Any owner of stock to the amount of one thousand shares, in any corporation doing business under the laws of the state of Washington for the purpose of mining, shall, at all hours of business or labor on or about the premises or property of such corporation, have the right to enter upon such property and examine the same, either on the surface or underground. And it is hereby made the duty of any and all officers, managers, agents, superintendents, or persons in charge, to allow any such stockholder to enter upon and examine any of the property of such corporation at any time during the hours of business or labor; and the presentation of certificates of stock in the corporation of the amount of one thousand shares, to the officer or person in charge, shall be prima facie evidence of ownership and right to enter upon or into, and make examinations of the property of the corporation.

Any violation of any of the provisions of this act by any officer or agent of such corporation shall constitute a misdemeanor, and upon conviction thereof

every such officer or agent shall be fined in a sum not greater than two hundred dollars for each offense.

In case such corporation shall fail and neglect to furnish the statement provided for in section 1, of this act within sixty days from and after such demand, the franchise of said corporation may be annulled in any action brought by such stockholder in the name of the state of Washington, in any superior court in the county in which said mining property is situated or in which the principal place of business of the corporation may be located.

All acts or parts of acts in conflict with the provisions of this act are hereby repealed. [Approved Mar. 16, 1901; L. 1901, p. 258.]

§ 4282a. Eminent Domain, Right of Extended to Water Power Companies.

The right of eminent domain for the purpose of appropriating real estate is hereby extended to all corporations that are now or that may hereafter be incorporated under the laws of this state, or of any state or territory of the United States and doing business in this state, for the purpose of conveying water by ditches, flumes, pipe lines, tunnels or any other means for the utilization of water power: Provided, however, That said right of eminent domain shall not be exercised in respect to any residence or business structure or structures.

§ 4282b. Right to Enter and Survey, etc.

Every corporation that is now or that may hereafter be incorporated under the laws of this state, or of any other state or territory of the United States and doing business in this state, for the purpose of conveying water by ditches, flumes, pipe lines, tunnels or any other means for the utilization of water power, shall have the right to enter upon any land between the termini of the proposed ditches, flumes, pipe lines, tunnels or any other means for the utilization of water power, for the purpose of examining, locating and surveying such ditches, flumes, pipe lines, tunnels or any other means for the utilization of water power, doing no unnecessary damage thereby.

§ 4282c. Right to Appropriate Real Estate.

Every such corporation shall have the right, subject to the proviso contained in section 1 hereof to appropriate real estate or other property for a right of way for such ditches, flumes, pipe lines, tunnels or other means of conveying water, and for any other corporate purposes, in the same manner and under the same procedure as now is or may be hereafter provided by law in the case of other corporations authorized by the laws of the state to exercise the right of eminent domain. [Approved Mar. 18, 1901; L. 1901, p. 299.]

§ 4289. Annual license fees.—The year in each year: State v. Jenkins, 22 Wash. contemplated by this act runs from July 495, 61 Pac. 141.

§ 4293a. Foreign Corporations—Penalties for Violations of Statutes.

Any foreign corporation doing business in this state which shall fail to comply with the provisions of sections 1525 and 1526 of 1 Hill's Annotated Statutes and Codes of Washington, shall be subject to a penalty of two hundred

and fifty dollars to be recovered in a civil action to be instituted by the attorney general in the name of the state of Washington, upon his being furnished with a sworn statement of facts sufficient to justify such action.

All penalties so recovered shall be paid into the general fund of the state treasury. [Approved Mar. 13, 1899; L. 1899, p. 100.]

§ 4312a. Railways, Regulation of—Bicycles Deemed Baggage.

Bicycles are hereby declared to be and are deemed baggage, and shall be transported as baggage for passengers by railroad corporations and steamboats, and subject to the same liabilities as other baggage; and no such passenger shall be required to crate, cover, or otherwise protect any such bicycle: Provided, however, That a railroad corporation or steamboat shall not be required to transport under the provisions of this act more than one bicycle for one person. [Approved Feb. 21, 1899; L. 1899, p. 23.]

§ 4325. Railway and transportation companies—Replevin of goods withheld for excessive freight.—Where the carrier demands a sum in excess of the sum due for freight charges, the consignee need not tender any sum before bringing suit to recover the goods. If a carrier has negligently delayed delivery of goods, or otherwise subjected itself to liability for damages in respect to the property carried, equal to or greater than the amount of the freight, the consignee may maintain replevin without a tender, and the claim for freight and the claim for damages may be adjudicated in the replevin suit: *Moran Bros. Co. v. Northern Pacific Ry. Co.*, 19 Wash. 266, 53 Pac. 49, 1101.

§ 4332. Railways—Failure to fence right of way.—Under Laws 1893, page 418, section 1 (Bal. Code, § 4332), providing that, in actions against railways for injuries to stock by collision with moving trains, the absence of fences is prima facie evidence of negligence, the fact that the track was unfenced would raise a mere presumption of negligence, which would be rebutted by proof that the train was running at a lawful rate of speed, equipped with the customary appliances, and that the stock when seen were so close that

the train could not be stopped in time to avoid striking them: *Dickey v. Northern Pacific Ry. Co.*, 19 Wash. 350, 53 Pac. 347.

That part of a railroad track within the limits of an incorporated town is not subject to the provisions of Laws 1893, page 418, section 1, making the failure of a railroad company to fence its track so as to turn stock prima facie evidence of negligence on its part in case of injury to stock by a moving train: *Ryan v. Northern Pacific Railway Co.*, 19 Wash. 533, 53 Pac. 824.

In an action against a railway company for killing cattle, in which the issue was as to whether they had got on the right of way through an open gate or by breaking through an inferior fence, evidence showing the condition of the fence immediately after the accident, that there were signs of fresh breaks which had been repaired, and bunches of cow hair upon the fresh raw edges of the planks, was competent for the purpose of establishing the point where the cattle got through, although not admissible for the purpose of establishing negligence by proof of repairs subsequent to the accident: *Townsend v. Northern Pacific Ry.*, 29 Wash. 185, 69 Pac. 750.

§ 4332a. Requiring Railway Companies to Fence Track.

Every person, company or corporation having the control or management of any railroad shall, within six months after the passage of this act, outside of any corporate city or town, and outside of the limits of any sidetrack or switch, cause to be constructed and maintained in good repair on each side of said railroad, along the line of said rights of way of such person, company or corporation operating the same, a substantial fence, and at every point where any roadway or other public highway shall cross said railroad, a safe and sufficient crossing must be built and maintained, and on each side of such crossing and at each end of such sidetrack or switch, outside of any incorporated city or town, a

standard cattleguard: Provided, That any person holding land on both sides of said right of way shall have the right to put in gates for his own use at such places as may be convenient.

Liable for Damages Occasioned by Failure.

Every such person, company or corporation owning or operating such railroad shall be liable for all damages sustained in the injury or killing of stock in any manner by reason of the failure of such person, company or corporation, to construct and maintain such fence or such crossing or cattleguard; but when such fences, crossings and guards have been duly made, and shall be kept in good repair, such person, company or corporation shall not be liable for any such damages, unless negligently or unlawfully done.

Negligence if Not Fenced.

That [in] all actions against persons, companies or corporations, operating steam railroads in the state of Washington, for injury to stock by collision with moving trains, it is prima facie evidence of negligence on the part of such person, company or corporation, to show that the railroad track was not fenced with a substantial fence or protected by a suitable cattleguard at the place where the stock was injured or killed. [Approved Mar. 16, 1903; L. 1903, p. 332.]

Classified: Chap. 104, Laws '07, Chap. 85, Laws '07.
§ 4333a. **Right of Way Over Public Lands Granted Railway Companies.**

That a right of way through, over and across the public lands of the state of Washington, except tide lands, harbor areas and shore lands, is hereby granted to any railroad company duly organized under the laws of any state or by the Congress of the United States to any extent not exceeding fifty feet on each side of the center line of said railroad now constructed or hereafter to be constructed. In order to obtain the benefits of this grant as to any railroad hereafter to be constructed, the company constructing or proposing to construct such road shall file with the board of state land commissioners a copy of its articles of incorporation, due proofs of organization thereunder, a map or maps accompanied by the field-notes or the survey and location of the line of said railroad, and shall pay to the state as hereinafter provided the amount of the appraised value of said lands affected by, used for or included within said right of way. In order to obtain the benefits of this grant as to any railroad now constructed, the company owning such road shall file with the board of state land commissioners a list of the lands affected by, used for, or included within such right of way, and shall pay to the state as hereinafter provided the amount of the appraised value of said lands affected by, used for or included within said right of way.

Classification and Appraisal.

That all lands of this state over which a right of way of any railroad company may now or hereafter be located shall be classified and appraised as hereinafter provided, and the state board of land commissioners shall constitute and serve as the board of appraisers mentioned in section 2 of article 16 of the constitution of this state.

Price Per Acre.

That upon the filing of said list or maps by said company as herein provided, said board of state land commissioners are hereby authorized and directed to ascertain and classify the lands affected by, to be used for and included within the aforesaid right of way, and shall thereupon fix the price per acre for each lot or block, quarter section and subdivision thereof, less the improvements, if any, so affected by, used for and included within said right of way, which price shall be the full market value thereof but not to be less than ten dollars per acre.

Damages for Improvements.

That should any improvements made as of right and with license from the state of Washington be upon any of such lands at the time of said appraisalment, the state board shall separately appraise the same together with the damage and waste done to said lands by the use and occupancy of the same or to adjacent lands and after deducting from the amount of the appraisalment for improvements the amount of such damage and waste the balance shall be determined and regarded as the value of said improvements, and the railroad company if not the owner of such improvements shall deposit with the state treasurer through the commissioner of public lands the value of the same as [shown] by said appraisalment within thirty days next following the date thereof. That where said right of way affects the improvements of any person other than [the person] owning said improvements or entitled thereto under existing law the applicant for said right of way shall file with the commissioner of public lands a valid release of damages duly executed by such person or persons, or a certified copy of a judgment of a court of competent jurisdiction showing that the damages resulting to such person or persons, ascertained in accordance [accordance] with existing law, has been made or paid into the registry of such court.

Record Required.

When said appraisalment is made it shall be recorded in the proceedings of said board of state land commissioners and the evidence or report upon which the same is based shall be preserved of record in the office of the board of state land commissioners and the commissioner of public lands shall prepare a certificate of said appraisalment in duplicate, one of which he shall file in his office and the other transmit to the auditor of the county in which the lands affected by said rights of way are located; and shall send a notice to the railroad company availing itself of the provisions of this act that such appraisalment has been made. The board of county commissioners of any county where the said right of way is situate shall be forthwith served with notice of appraisalment. A copy of said appraisalment shall be forthwith filed with the board of county commissioners of any county in which the land is situated.

Appeal.

Within thirty days after the appraisalment of said lands, as aforesaid, the board of county commissioners of any county in which the right of way is situate, or any person, company or corporation may appeal from the same to the superior court of the county in which the right of way affected by the appeal

is situate; but if the applicant is the party appealing, he or it must deposit the amount of the appraisement in the registry of the court to which the appeal is taken. All appeals shall be heard and determined by the court de novo. The taking of an appeal shall not prevent the use of the land affected thereby for right of way purposes during the prosecution of the appeal. All costs on appeal shall be paid by the applicant.

Future Grants by State Subject to.

That upon full payment of the value of such easement ascertained as aforesaid, any future grant or lease by the state of the lands affected by said right of way shall be subject to the easements obtained under the provisions of this act.

Rights Hereunder Cumulative.

Nothing contained in this act shall be deemed to in any way conflict with any existing law of this state relating to the method by which railroad companies may acquire rights of way. No pending condemnation proceeding nor right claimed therein shall be affected in any way by the provisions of this act.

An emergency exists and this act shall take effect immediately. [Approved Mar. 18, 1901; L. 1901, p. 353.]

§ 4334. Eminent Domain—Extent of Right.

Every corporation organized for the construction of any railway, macadamized road, plank road, clay road, canal or bridge, is hereby authorized and empowered to appropriate, by condemnation, land and any interest in land or contract right relating thereto, including any leasehold interest therein and any rights of way for tunnels beneath the surface of the land, and any elevated rights of way above the surface thereof, including lands granted to the state for university, school or other purposes, and also tide and shore lands belonging to the state (but not including harbor areas), which may be necessary for the line of such road, railway or canal, or the site of such bridge, not exceeding two hundred feet in width, besides a sufficient quantity thereof for tollhouses, workshops, materials for construction, and a right of way over adjacent lands or property, to enable such corporation to construct and prepare its road, railway, canal or bridge, and to make proper drains; and in case of a canal, whenever the court shall deem it necessary, to appropriate a sufficient quantity of land, including lands granted to the state [for] university, school or other purposes, in addition to that before specified in this section, for the construction and excavation of such canal and of the slopes and berms thereof, not exceeding one thousand feet in total width; and in case of a railway to appropriate sufficient quantity of any such land, including lands granted to the state for university, school and other purposes and also tide and shore lands belonging to the state (but not including harbor areas), in addition to that before specified in this section, for the necessary side tracks, depots and water stations, and the right to conduct water thereto by aqueduct; compensation therefor to be made to the owner thereof irrespective of any benefit from any improvement proposed by such corporation, in the manner provided by law: And provided, further, That if such cor-

poration locate the bed of such railway or canal upon any part of the track now occupied by any established state or county road, said corporation shall be responsible to the county commissioners of said county or counties in which such state or county road so appropriated is located, for all expenses incurred by such county or counties in relocating and opening the part of such road so appropriated. The term land as herein used includes tide and shore lands but not harbor areas; it also includes any interest in land or contract right relating thereto, including any leasehold interest therein. [Amendment, approved Mar. 18, 1903; L. 1903, p. 383, § 1.]

§ 4369. Telegraph and telephone—Use of highways.—There being no restriction on the legislative control of streets and highways contained in article 12, section 19, of the constitution, which declares the right of individuals and corporations to maintain lines of telegraph and telephone within the state, the provision in Ballinger's Code, section 4369, the statute passed pursuant to such constitutional declaration, "that where the right of way, as herein contemplated, is within the corporate limits of any incorporated city, the consent of the city council thereof shall be first obtained before such telegraph or telephone line can be erected thereon," is valid, and amounts to an authorization to the council to refuse, as well as consent, to such use of the streets, and is not intended as an authorization of power merely to prescribe reasonable and proper regulations for the construction and operation of such lines, inasmuch as the power of regulation and control is amply conferred by Ballinger's Code, section 739, subdivision 7: *State ex rel. Telegraph Co. v. Spokane*, 24 Wash. 53, 63 Pac. 1116.

§§ 4378-4387. Boom companies — Eminent domain.—Under Laws of 1889-90, page 470, and Laws of 1895, page 128, authorizing the formation of boom companies and providing that they shall have power to acquire and hold, buy, lease, or purchase real property necessary for carrying on their business, and if the owners of land sought to be appropriated for such purposes will not agree as to the amount of compensation to be paid for the land, then the same may be determined under the statutes relating to eminent domain, there is no express or implied authorization to use the tide lands of the state except by purchase or lease, inasmuch as the law in force authorized the acquisition of tide lands of the state at a fixed price or for the leasing of such lands under certain conditions; consequently the filing of a map of location by a boom company did not amount to an appropriation of the state's tide lands, nor entitle it to compensation for improvements placed thereon subsequent to January 1, 1891: *Samish*

Boom Co. v. Callvert, 27 Wash. 611, 68 Pac. 367.

Watercourses declared highways.—A stream eighteen miles long, with an average width of one hundred feet and depth of three feet, which can, during annually recurring freshets, be used profitably for the floating of logs to market, must be held to be a public highway for the purpose of floating logs and timber products, within the contemplation of Ballinger's Code, sections 4378-4386, which provide that, for the purpose of booming and floating logs and timber products, all navigable waters in the state shall be deemed public highways: *Watkins v. Dorris*, 24 Wash. 636, 64 Pac. 840.

The statutes of this state which declare non-navigable streams upon which logs can be made floatable public highways and authorizing their use as such by corporations organized for booming and floating logs, must be held as conferring the same rights upon individuals: *Id.*

Article 17, section 1, of the constitution, which reserves title to the state in the beds of all navigable streams below the line of ordinary high-water mark, has reference only to such streams as are navigable for general commercial purposes, and not to those which are public highways merely for the floating of logs and timber products: *Id.*

Although a non-navigable stream upon which logs are floatable may be a public highway so far as the floating of logs is concerned, persons or corporations using it for that purpose have no right to interfere with the bed of the stream, or with its banks, for the purpose of removing obstructions, without the riparian owner's consent, or the exercise of the right of eminent domain, where title to the bed of the stream is in such riparian owner: *Id.*

A riparian owner upon the banks of a stream which is navigable only for logs in time of freshets, is entitled to damages, where his lands become overflowed by reason of the formation of a jam in the stream due to the negligence of parties floating logs therein: *Id.*

§ 4391. Rights of Riparian Owners—Adjacent.

After such corporation shall have entered upon its duties, which shall be within three months of the time of filing of its maps of location, such corporation shall come in streams theretofore navigable, upon the request of the owners, and in case of logs and other timber products being commingled, or lying in such a position as to obstruct or impede the drive, without such request, and in streams not navigable before such improvements were made, without request, sluice, sack and drive all logs and other timber products of suitable length that may be placed in the beds of the stream improved as aforesaid, or that may be delivered into its ponds, and shall handle all such logs and other timber products of all persons upon the same terms, without discrimination as to time of sluicing, sacking and driving such logs, or other timber products, and shall be entitled to charge and collect reasonable and uniform tolls for such services on all logs and other timber products so handled; such tolls shall not exceed one dollar per thousand feet, board measure, on logs, spars, or other large timber, and reasonable compensation on all other timber products, for sluicing, sacking and driving the same, such charges to be fixed by the board of trustees of such corporation in proportion to the distance such timber is to be driven and the number of dams through which the same is necessarily sluiced, and in case any such corporation shall be engaged in the booming and rafting of logs and other timber so sluiced, sacked and driven, an additional sum not to exceed sixty cents per thousand feet for logs, spars and other large timber, and reasonable compensation on all other timber products may be charged for booming and rafting the same; the amount of such logs and other products is to be determined by the usual method of scaling, and such corporation shall have a lien upon all logs and other timber products handled for sluicing, sacking and driving, and for booming and rafting the same, to be enforced in any manner now or hereafter provided by law for the enforcement of liens for labor on logs. [Amendment, approved Mar. 18, 1901; L. 1901, p. 295.]

§ 4391. Boom companies—Tolls—Liens. Laws 1895, page 130, section 5, authorizing boom companies to sluice, sack and drive all logs and timber products placed in the bed of any river improved by them for such purpose, upon request of owners, or without such request, in case of logs lying in such position as to obstruct or impede the drive, and authorizing the collection of a reasonable toll therefor and giving a lien upon the logs so handled, is constitutional: *East Hoquaim Boom etc. Co. v. Neeson*, 20 Wash. 142, 54 Pac. 1001.

This section held not to violate section 16, article 1, of the constitution: *Id.*

The mere construction of a boom across a stream does not entitle the boom company to tolls on logs going through, when it performs no services in connection

therewith, since Ballinger's Code, section 4391, authorizes such companies to charge tolls only in cases where requested by the owners to sluice, sack and drive their logs; and, in cases when not requested, where the logs lie in such position as to impede the drive: *Gray's Harbor Boom Co. v. McAmant*, 21 Wash. 465, 58 Pac. 573.

A boom company is not entitled to collect tolls for driving the logs of another, under the authority of Ballinger's Code, section 4391, providing therefor in case such logs obstruct or impede its drive, when it appears that such logs did not intermingle with, or obstruct, or impede the driving of the boom company's logs: *Washougal etc. Co. v. Skamania Logging Co.*, 23 Wash. 89, 62 Pac. 450.

§ 4394a. Power to Construct and Maintain Booms Granted to Ilwaco Railway and Navigation Company.

That there be and is hereby granted to the Ilwaco Railway and Navigation Company, and its successors and assigns, the right to construct, maintain and

operate a log boom and storage boom for logs on and over all that portion of the submerged tide lands of the state of Washington lying immediately in front of tracts fourteen and fifteen of plat three of the tide flats of Pacific county, Washington, as surveyed by the board of tide land appraisers of Pacific county, Washington, and in accordance with the maps on file in the office of the commissioner of public lands, and for the whole and uniform width of said tracts out to the inner harbor line as established in front of the town of Ilwaco.

May Use Submerged Lands—Rentals.

That the Ilwaco Railway and Navigation Company, its successors and assigns, shall for so long a time as it maintains and operates its railroad and maintains its wharf and boom, have the right and privilege to use, occupy, possess and enjoy all of the submerged tide lands described in the foregoing section, at such annual rental as may be determined by the board of state land commissioners.

Prior Right of Purchase.

That if at any time hereafter said land shall be platted and appraised and the Ilwaco Railway and Navigation Company, or its successors or assigns, shall have constructed its said log boom and storage boom for logs on and over the said land herein granted, then it or they shall have the preference right of purchase of the whole of said tide lands at the appraised value thereof for the period of sixty days next after the date of filing of said appraisement with the commissioner of public lands, and in case said preference right shall not be exercised within the time limited, said lands may be sold to any other applicant therefor.

Regulation of Use.

That the board of state land commissioners are authorized and empowered to regulate pursuant to legislative enactment, or under reasonable rules or regulations to be adopted by them, or by both methods, the manner of use and occupation of said tide lands and the maintenance of said boom and storage boom for logs thereon.

An emergency exists, and this act shall take effect immediately. [Approved Mar. 16, 1903; L. 1903, p. 265.]

§ 4395. Building and Loan Associations—Authorized.

Whenever any number of persons not less than ten desire to be incorporated as a building and loan association, for the purpose of accumulating the savings and funds of its members and lending its shareholders or others the funds so accumulated, they shall make and execute a written declaration to that effect in the form now provided by statute for the execution of deeds of real estate, to entitle the same to record. Said declaration shall state the name of such association, its principal place of business, which shall be within this state, the limit of capital to be accumulated, the time of its duration, the names and places of residence of such persons and that it is organized under this act for the purpose herein expressed. When so executed said declaration shall be filed and recorded in the office of the secretary of state, whereupon such officer shall issue

a copy of such declaration, under his certificate, in proper form, setting forth the time and place of filing and recording thereof, in his office, which declaration and certificate shall thereupon be recorded in the office of the recorder of deeds of the county where such association is located, and published once in a daily or weekly newspaper, printed and published and of general circulation in said county: Upon complying with the foregoing requirements, and upon filing an affidavit of proof of such publication in the office of the secretary of state, the persons executing such declaration, their associates and successors, shall become a corporate body. [Amendment, passed Mar. 12, 1903, and became a law without the governor's approval; L. 1903, p. 216.]

§ 4398. Securities of.

For every loan made a note or bond secured by first mortgage on real estate shall be given, which security shall be double the value of the loan and satisfactory to the directors, and where the borrowers are shareholders of the association, the loan shall also be secured by a pledge of their shares as collateral security: Provided, That the directors in their discretion may loan upon the security of the association stock to the amount of its withdrawal value, and may also loan upon or invest in approved federal, state, county and municipal bonds and warrants. [Amendment, passed Mar. 10, 1903; and became a law without the approval of the governor; L. 1903, p. 217.]

§ 4400. Deposit of Securities.

Every building and loan association heretofore or hereafter incorporated under the laws of this state, and governed by this act, shall deposit and keep with the state auditor, or with a duly chartered trust company of this state, approved by the state auditor, in trust for all its members and creditors, all mortgages received by it in the usual course of business. When deposited with a trust company such company shall certify to the state auditor the possession of such securities, and the same shall not be surrendered without the authority or sanction of the state auditor: Provided, That every such corporation heretofore organized not having or owning mortgages to the amount of twenty-five thousand (25,000) dollars shall deposit with the state auditor additional securities, to make, with the securities so owned and deposited, equal in value to said sum of twenty-five thousand (25,000) dollars, and every such corporation hereafter organized under this act, except such associations as confine their business operations wholly to the county in which such associations are incorporated, and the counties adjacent thereto shall deposit and keep with the state auditor in trust, as aforesaid, securities of the value of twenty-five thousand (25,000) dollars before commencing to do business. The securities mentioned in this proviso shall consist of bonds or treasury notes of the United States or national bank stocks or bonds of this state, or any other state of the United States, or of any solvent city, county or town of this state, or any other state of the United States, having a legal authority to issue the same, and such securities may be withdrawn, from time to time, when mortgage securities of corresponding value shall be deposited, as provided in this act, or when other securities of like character are substituted therefor, and it shall be the duty of the state auditor, from time

to time, to examine said associations to ascertain whether all its securities are deposited, as required by this act: Provided, That whenever required by the laws of any other state, territory or nation, all securities taken in such state by any association organized under the laws of this state, and subject to the provisions of this act, may be deposited with some officer, authorized to receive the same in such state under the laws thereof for the benefit of its members and creditors; but in every such case a certificate of such deposit, showing the amount and character of such deposit, shall be filed with the auditor of this state, and renewed annually, together with a statement verified by the affidavit of some officer of such association, who has knowledge of the facts, showing all of the securities taken by such association, in such state, at the time of the filing of such certificate; and in case any securities taken in any such state are not deposited there, then the same shall be deposited here, as required by this act. [Amendment, approved Mar. 12, 1903; L. 1903, p. 217.]

§ 4400. Mortgage securities deposited are trust fund.—Under the provisions of Laws 1889-90, page 56, relating to building, loan and savings associations and requiring such organizations to deposit with the state auditor, or with a trust company approved by him, all mortgage securities obtained in course of business, such mortgages cannot be sold by any such association to third parties, but are constituted by statute as a trust fund for the benefit of all its stockholders: *Trowbridge v. Hamilton*, 18 Wash. 686, 52 Pac. 328.

Building and loan associations—De-

positing securities.—Ballinger's Code, sections 4400, 4402, which require every building and loan association doing business in the state to deposit and keep with the state auditor, or with a duly chartered trust company approved by him, in trust for all of its members and creditors, all mortgages or other securities received by it in the usual course of business in this state, does not apply to mortgages and securities taken by such associations prior to the passage of said statutes: *Hale v. Stenger*, 22 Wash. 516, 61 Pac. 156.

§ 4419. Not Amenable to Usury Laws.

No premium taken for loans, nor amounts charged for expenses, as allowed in this act nor any payments on account of installments of stock made by a borrowing member shall be considered as a repayment on his loan, or shall render such association amenable to the laws relating to usury. [Amendment, approved Mar. 12, 1903; L. 1903, p. 218.]

§ 4425. Expense Fund—Amount of.

That no association governed by this act shall set apart as an expense fund, exclusive of admission fees, to exceed one dollar per year upon each share of its stock, or assess any fines for nonpayment of monthly installments, or otherwise, in excess of ten cents per share for the first month that the same shall be in arrears, and fifteen cents per share per month for every month thereafter: Provided, That where loans are made to nonmembers of the association as provided in this act, the association may set apart as an expense fund not to exceed one per cent per annum of the principal of said loans. [Amendment, approved Mar. 12, 1903; L. 1903, p. 219.]

[§ 4428, repealed by act of 1903; L. 1903, p. 219.]

§ 4433. Notice of Annual Meetings to be Mailed to Each Member.

At least thirty days prior to any annual or special meeting of any such association a notice stating the time and place of such meeting shall be deposited

in the postoffice at the headquarters of such association, directed to each member at his address as the same appears at the time on the books of the association, and when so deposited, postage prepaid, shall be deemed a legal and sufficient notice of any such meeting; and there shall be attached to and accompany such notice any proposed amendment or amendments to the articles of association and a statement of any officers to be elected at such meeting; any members of such association entitled to vote in person or by proxy. [Amendment, approved Mar. 12, 1903; L. 1903, p. 219.]

§ 4463. Trust Companies—Organization of.

Seven or more persons of full age may become a trust company on the terms and conditions and subject to the liabilities prescribed in this act; the name of every company formed under this act shall contain the word "trust," but shall not be that of any other existing corporation of this state; the capital stock of such trust company hereafter organized shall not be less than one hundred thousand dollars: "Provided, That in cities having less than 25,000 inhabitants such companies may be organized with \$50,000 capital, and in cities having less than 10,000 inhabitants such companies may be organized with \$25,000 capital, and shall be divided into shares of one hundred dollars each, all of which shall be paid in cash before any trust company shall be authorized to transact any business, and such payment shall be certified to the secretary of state under oath by the president and treasurer or secretary of the trust company; hereafter no corporation shall be organized for the purpose of carrying on a trust company business in the state of Washington except under this act, and no company hereafter organized under any other act shall use the word "trust" as a part of its name.

Such persons shall under their hands and seals execute and acknowledge an organization certificate in triplicate, which shall specifically state:

- (1) The name by which the corporation shall be known.
- (2) The place where its business is to be transacted.
- (3) The amount of its capital stock, and the number of shares into which the same is to be divided.
- (4) The name, residence and postoffice address of each member of the corporation.
- (5) The term of its existence, not exceeding fifty years.

§ 4463a. Certificate of Incorporation—Publication.

The certificate of incorporation shall be acknowledged as required for deeds of real estate, and shall be recorded in a book kept for that purpose in the office of the county auditor where the principal place of business of such trust company in this state is to be established, and with the secretary of state: Provided, however, That before the corporation shall be authorized to transact business in this state other than such as relates to its formation and organization, the secretary of state shall examine or cause to be examined, in order to ascertain whether the requisite capital of such corporation has been fully paid in cash, and if it appears from such examination that such capital stock has not been fully paid in cash, a certificate of authorization shall not be granted and no

such corporation shall commence business until such certificate of authorization has been granted; but when it shall appear to the secretary of state that the entire capital stock has been paid in, and that such trust company is lawfully entitled to commence business he shall give to such company a certificate under his hand and seal that such company is duly and legally organized under this act as a trust company, and authorized to transact business as such trust company in this state; the trust company shall cause such certificate of authority of the secretary of state, issued in pursuance of this act, to be published once a week for at least four successive weeks next after the issuance thereof, in a newspaper of general circulation in the place where said trust company is established, and shall file proof of such publication with the secretary of state.

Amended, Chap. 126, Laws '07.
§ 4463b The Corporation—Powers.

As soon as the certificate of authority is issued by the secretary of state as provided in the preceding section, the persons named in the articles of incorporation, and their successors, shall thereupon and thereby become a corporation, and shall have power:

(1) To act as the fiscal or transfer agent of any state, municipality, body politic or corporation, and in such capacity to receive and disburse money.

(2) To transfer, register and countersign certificates of stock, bonds, or other evidence of indebtedness, and to act as agent of any corporation, foreign or domestic, for any purpose now or hereafter required by statute or otherwise.

(3) To receive deposits of trust moneys, securities and other personal property from any person or corporation, and to loan money on real or personal securities, and to discount and negotiate promissory notes, drafts, bills of exchange and other evidences of debt; and to buy, sell and exchange coin and bullion.

(4) To lease, hold, purchase and convey any and all real property necessary for and convenient in the transaction of its business, or which the purposes of the corporation may require, or which it shall acquire in satisfaction or partial satisfaction of debts due the corporation under sales, judgments or mortgages, or in settlement or partial settlement of debts due the corporation from any of its debtors.

(5) To act as trustee under any mortgage or bond issued by any municipality, body politic or corporation, and to accept and execute any other municipality or corporate trust not inconsistent with the laws of this state.

(6) To accept trusts from, and execute trusts for, married women, in respect to their separate property, and to be their agent in the management of such property, or to transact any business in relation thereto.

(7) To act, under the order or appointment of any court of record, as guardian, receiver or trustee of the estate of any minor, and as depository of any moneys paid into court, whether for the benefit of any such minor or other person, corporation or party.

(8) To take, accept and execute any and all such legal trusts, duties and powers in regard to the holding, management and disposition of any estate, real or personal. and the rents and profits thereof, or the sale thereof, as may be

granted or confided to it by any court of record, or by any person, corporation, municipal or other authority, and it shall be accountable to all parties in interest for the faithful discharge of every such trust, duty or power which it may so accept.

(9) To take, accept and execute any and all such trusts and powers of whatever nature or description as may be conferred upon or intrusted or committed to it by any person or persons, or any body politic, corporation or other authority, by grant, assignment, transfer, devise, bequest or otherwise, or which may be intrusted or committed or transferred to it or vested in it by order of any court of record, and to receive and take and hold any property or estate, real or personal, which may be the subject of any such trust.

(10) To purchase, invest in and sell stocks, promissory notes, bills of exchange, bonds, debentures and mortgages and other securities; and when moneys or securities for moneys are borrowed or received on deposit, or for investment, the bonds or obligations of the company may be given therefor, but it shall have no right to issue bills to circulate as money.

(11) To be appointed and accept the appointment of assignee or trustee, under any assignment for the benefit of creditors of any debtor, made pursuant to any statute or otherwise.

(12) To act under the order or appointment of any court of record or otherwise as receiver or trustee of the estate or property of any person, firm, association or corporation.

(13) To be appointed and to accept the appointment of executor of, or trustee under, the last will and testament, or administrator with or without the will annexed, of the estate of any deceased person, and to be appointed and to act as guardian of the estate of lunatics, idiots, persons of unsound mind and habitual drunkards: Provided, however, The power hereby granted to trust companies to act as guardian or administrator with or without the will annexed shall not be construed to deprive parties of the prior right to have issued to them letters of guardianship, or of administration as such right now exists under the laws of this state.

(14) To exercise the powers conferred on and to carry on the business of a safe deposit company.

(15) To collect coupons on, or interest upon, all manner of securities when authorized so to do by the parties depositing the same.

(16) To receive and manage any sinking fund of any corporation, upon such terms as may be agreed upon between said corporation and those dealing with it.

(17) Generally to execute trusts of every description not inconsistent with the laws of this state or of the United States.

(18) To receive money on deposit to be subject to check or to be repaid in such manner and on such terms, and with or without interest, as may be agreed upon by the depositor and the said trust company.

§ 4463c. Management—Control.

The affairs of every such corporation shall be managed and its corporate powers exercised by a board of directors of such number, not less than seven

nor more than thirty, as from time to time may be prescribed in its by-laws. No person can be a director who is not the holder of at least ten shares of the capital stock of the corporation. The persons named in the articles of incorporation shall constitute the first board of directors, and may add to their number not exceeding the limit of thirty, and shall severally continue until others are elected to fill their respective places. Within six months from the time when such corporation shall commence business, the first board of directors shall classify themselves by lot into three equal classes, as nearly as may be. The term of office of the first class shall expire on the third Wednesday of January next following such classification; the term of office of the second class shall expire one year thereafter; and the term of office of the third class shall expire two years thereafter. At or before the expiration of the term of the first class, and annually thereafter, a number of directors shall be elected equal to the number of directors whose term will then expire, who shall hold office for three years, or until their successors are elected and qualified. Such elections shall be held at the office of the corporation and at such time and upon such public notice, not less than ten days, by advertisement in at least one newspaper as shall be prescribed in the by-laws. In case of failure to elect any director on the day named, the directors whose term of office does not that year expire may proceed to elect a number of directors equal to the number in the class whose term that year expires, or such number as may have failed of re-election. The persons so elected, together with the directors, whose term of office shall not that year expire, shall constitute the board of directors until another election shall be held according to law. Vacancies occurring in the intervals of election shall be filled by the board. Each director when appointed or elected shall take an oath that he will, so far as the duty devolves upon him, diligently and honestly administer the affairs of such corporation, and will not knowingly violate, or willingly permit to be violated, any of the provisions of law applicable to such corporation, and that he is the owner in good faith and in his own right of the number of shares of stock required by this section, subscribed by him or standing in his name on the books of the corporation, and that the same is fully paid, is not hypothecated or in any way pledged as security for any loan or debt. Such oath shall be subscribed by the director making it, and certified by the officer before whom it is taken and shall be immediately transmitted to the secretary of state, and filed and preserved in his office.

§ 4463d. No Indebtedness of Officer, Stockholder or Employee Permitted.

No trust company now in existence or hereafter organized shall make any loan to any officer, stockholder or employee from its trust funds and such trust company shall not permit any officer, stockholder or employee to become indebted to it in any way out of its trust funds; any president, vice-president, director, secretary, treasurer, cashier, teller, clerk or agent of any such corporation who knowingly violates this section, or who aids or abets any officer, clerk or agent in any such violation, shall be guilty of a felony and punished accordingly.

§ 4463e. Reports—Penalties for Failures to Make.

Every such company shall make to the secretary of state not less than two reports during each year, according to the forms which may be prescribed by him, verified by the oaths or affirmations of the president or vice-president and treasurer or secretary of such corporation, and attested by the signatures of at least three directors; every such report shall exhibit in detail and under appropriate heads the resources and liabilities of the corporation at the close of business at any day past specified by the secretary, and shall be transmitted to him within twenty days after the receipt of a request or requisition therefor by him, and an abstract or summary of every such report in such form as shall be prescribed by the secretary of state shall be published by the trust company once in a newspaper published in the place where such trust company is established, and such proof of publication shall be furnished as may be required by the secretary; such publication shall be made within two weeks after the filing of such report, the expense thereof to be borne by such trust company; the secretary shall also have the power to call for special reports from any trust company whenever in his judgment the same are necessary to a full and complete knowledge of its condition; every trust company which fails to make and transmit any report required under this section shall be subject to a penalty of one hundred dollars for each day after the period herein specified that it delays to make and transmit its report, to be sued for and collected by the secretary of state in the name and for the benefit of the state.

§ 4463f. Penalties for Misfeasances.

Every director, officer, agent or clerk of any trust company who willfully and knowingly subscribes or makes any false statement of facts, or false entries in the books of such trust company, or knowingly subscribes or exhibits any false paper, with intent to deceive any person authorized to examine as to the condition of such trust company, or willfully or knowingly subscribes to or makes any false reports, shall be deemed guilty of a misdemeanor and punished accordingly.

§ 4463g. Loans on Shares Prohibited.

No trust company shall make any loan on the security of the shares of its own capital stock, nor be the purchaser or holder of any such shares unless such security or purchase shall be necessary to prevent loss upon a debt previously contracted in good faith; and stock so purchased or acquired shall within one year from the time of its purchase be sold or disposed of at public or private sale: Provided, That nothing in this section contained shall apply to any loan made before the passage of this act.

§ 4463h. Deposit by Minor.

When any deposit shall be made by or in the name of any minor, the same shall be held for the exclusive right and benefit of such depositor, and free from the control and lien of all other persons, except creditors of such minor, and shall be paid, together with the dividends and interest thereon, to the person in whose name the deposit shall have been made, and the receipt of acquittance

of such minor shall be a valid and sufficient release and discharge for such deposit, or any part thereof, to the trust company.

§ 4463i. Inspection—Supervision.

Every trust company shall be subject to the inspection and supervision of the secretary of state, and it shall be the duty of said secretary, either personally or by some person or persons to be appointed by him, whenever he shall deem it expedient, or at the request of any such trust company, to examine any such trust company, and it shall be the duty of the officers and employees of such trust company to exhibit its books, securities, records and accounts to the person or persons authorized by said secretary to conduct the examination, and otherwise to facilitate the same so far as it may be in their power; the said secretary, or any examiner appointed by him, shall have power to examine under oath or affirmation the directors, officers and employees of any such trust company relative to its business and affairs, and for that purpose any such examiner shall have power to administer oaths and affirmations.

§ 4463k. Insolvency—Actions Against—Receiver.

Whenever it shall appear to the secretary of state from any report submitted for examination made under the provisions of this act that the affairs of any trust company are in an unsound condition because of illegal or unsafe investments, or that its liabilities exceed its assets, or that it is transacting business without authority or in violation of law, or that it is unsafe or inexpedient for such trust company to continue business, it shall be the duty of the attorney general, on notice by the secretary of state, to institute such proceedings against the trust company as the nature of the case may require; if from any such examination the secretary of state shall have reason to conclude that any such trust company is in an unsafe or unsound condition, he may forthwith take possession of such trust company's property and business and retain such possession until the termination of the action or proceeding instituted by the attorney general, or until the appointment of a receiver; and pending such possession by the secretary of state, or such proceedings by the attorney general, all the remedies at law or in equity of any creditor or stockholder against the said trust company shall be suspended.

§ 4463l. Refusal to Submit to Examination—Proceedings.

If any trust company shall refuse to submit its books, papers and concerns to the inspection of the secretary of state, or any examiner appointed by him, or if any director or officer thereof shall refuse to submit to be examined upon oath touching the concerns of such trust company, the secretary of state may report the fact to the attorney general, who may proceed against said trust company as the nature of the case may require; if it shall appear to the secretary of state that any trust company has violated its charter or any law of this state binding upon it, or is conducting business in an unsafe or unauthorized manner, he shall by an order under his hand and official seal, addressed to such trust company, direct a discontinuance of such illegal and unsafe practices, and conformity with the requirements of its charter and safety and security in its

transactions; in case such trust company shall refuse or neglect to comply with such order, the secretary may report the fact to the attorney general, who may proceed against the trust company as an insolvent corporation.

§ 4463m. Appointment as Trustee, etc.—Oath.

In all cases where any corporation in this state authorized by its charter to act as trustees, executors, administrators or guardians, shall be appointed executor, administrator or trustee of any estate or guardian of any infant, it shall and may be lawful for the president, cashier, or treasurer of such corporation to take and subscribe for such corporation any and all oaths or affirmations required to be taken or subscribed by such executor, administrator, trustee or guardian.

§ 4463n. Stockholder's Liability for Debts.

If default shall be made in the payment of any debt or liability contracted by such corporation, the stockholders thereof shall be individually responsible, equally and ratably for the then existing debts of the corporation, but no stockholder shall be liable for the debts of the corporation to an amount exceeding the par value of the respective shares of stock by him held in such corporation at the time of such default.

§ 4463o. Extension of Life—Change of Name—Increase of Capital Stock.

Every trust company hereafter organized under this act may extend its corporate existence, change its name, increase its capital stock, make such other and further amendment, change or alteration as may be desired, or amend its charter or certificate of incorporation in manner following: The board of directors shall pass a resolution declaring that such amendment, change or alteration is advisable and calling a meeting of the stockholders to take action thereon; the meeting shall be held upon such notice as the by-laws provide, and in the absence of such provisions, upon ten days' notice in writing, given personally, or by mail; if two-thirds in interest of the stockholders shall vote in favor of such amendment, change or alteration, a certificate thereof shall be signed by the president and secretary under the corporate seal, acknowledged or proved as in the case of deeds of real estate, and such certificate, together with the written assent, in person or by proxy, of two-thirds in interest of such stockholders, shall be filed in the department of the secretary of state, and upon the filing of the same, the charter or certificate of incorporation shall be, and be deemed to be amended accordingly: Provided, That the certificate to be made and filed in pursuance to this section shall contain only such provisions as it would be lawful and proper to insert in an original certificate of incorporation made at the time of making such amendment, change or alteration; no change shall be made in the charter or certificate of incorporation of such trust company whereby the rights, remedies or security of existing creditors shall be in any manner impaired; said certificate or a copy thereof, duly certified by the secretary of state, shall be evidence in all courts and places.

§ 4463p. Fees to Secretary of State.

The secretary of state shall require in advance the following fees:

For filing articles of incorporation or certified copies of articles, or other certificates required to be filed in his office.....\$10.00
 Issuing certificate of authority..... 10.00
 For each renewal certificate of authority..... 10.00
 For filing semi-annual statement of condition..... 10.00
 For making any examination required by this act..... 25.00
 For furnishing copies of papers filed in his office, 20 cents per folio: Provided, that all fees so collected shall be paid to the state treasurer. [Approved Mar. 17, 1903; L. 1903, p. 367.]

§ 4464. Providing for the Organization and Regulation of Mutual Marine and Fire Insurance Companies.

A mutual marine and fire insurance company organized under the provisions of this chapter shall have an agreement under the seal of each subscriber thereto, substantially as follows: The subscribers severally agree to pay to the insurance company on demand the whole or such part of the amounts set against our names as may be called from time to time for the use of said company, in the payment of its losses and expenses not otherwise provided for.

§ 4464a. Policies—Limitation of Amount of.

Such companies shall not issue policies until the amount of three hundred thousand dollars, which shall be the total of such subscriptions, shall have been so subscribed, and a certificate signed by the president and a majority of the trustees certifying that the subscribers are known to them and that they believe them to be solvent and able to pay the full amount of their subscriptions has been deposited with the insurance commissioner and twenty-five per cent of the full cash amount of such subscriptions shall have been paid in cash, and a certificate filed with the insurance commissioner showing said payment of said part of said subscription. If a subscriber dies or becomes insolvent or fails to pay the assessment made upon his subscription within thirty days after date of notice his subscription shall be canceled and if the amount of the subscription fund is thereby or otherwise reduced the deficiency shall be made good by new subscriptions certified and paid in the same manner as the original. Subscribers shall be entitled to annual dividends of two per cent upon the amount of their subscriptions from the profits of the company and not otherwise: Provided, That the liability of each subscriber shall continue until his subscription shall have been fully paid, notwithstanding a sale, transfer or assignment of his said subscription or any interest therein, and the assignee shall be jointly and severally liable upon such subscription so assigned.

§ 4464b. Surplus—How Disposed of.

The net profits or divisible surplus of such companies shall be annually divided among the insured whose policies terminated within the year in proportion to the contribution of each to such profits or surplus, and such dividends shall be made only in scrip certificates payable only out of the accumulation of net profits or surplus, which accumulation shall constitute and be kept invested by the company as a separate fund in trust for the redemption of such scrip certificates and the contingent payment of losses and expenses as herein

provided. Such certificates until redeemed shall be subject to future losses and expenses of the company and to be reduced if the redemption fund is drawn upon for the payment of such losses and expenses. But no part of the redemption fund shall be used for the payment of losses or expenses unless the cash assets of the company are insufficient therefor and except to the extent of the deficiency; and if any portion thereof shall be used for such payment the outstanding certificates shall be reduced in proportion so that the redemption fund shall at all times equal the amount of the unredeemed certificates. The net income of the redemption fund shall be divided annually among the holders of its certificates; or the company may make such certificates with a specific rate of interest payable from the income of its invested funds. The maximum of such accumulation of profits shall be three hundred thousand dollars, and all excess of profit above said amount shall be applied annually to the payment of the certificates in the order of their issue. The certificates shall be forthwith payable when the company shall cease to issue policies and the fund is no longer liable to be drawn upon for the payment of losses.

§ 4464c. Membership—Voting Qualifications.

Every person insured by a mutual marine and fire insurance company shall be a member while his policy is in force, entitled to one vote for every five thousand dollars of the total amount of policies held by him, and shall be notified of the time and place of holding its annual meetings by a written notice to his last known address. A corporation which becomes a member of such company may authorize any person to represent it in such company, and such representative shall have all the rights of an individual member. Each subscriber to the subscription fund of such company shall be a member of such company and entitled to one vote for every one thousand dollars of his subscription, unless he be in arrears in the payment of an assessment.

§ 4464d. Trustees—Election of.

Every such company shall annually elect by ballot a board of not less than seven trustees, who shall with the officers elected by such trustees manage and conduct its business and who shall hold office for one year or for such term as the by-laws may provide, and until their successors are qualified. Two-thirds at least of the trustees shall be citizens of this state and members only shall be eligible as trustees or officers of the company. [Filed without approval, Mar. 16, 1903; L. 1903, p. 287.]

§ 4465. Fraternal Orders—Incorporation of.

Any lodge, encampment of [or] other subordinate lodge of Free and Accepted Masons, Independent Order of Odd Fellows, Knights of Pythias, or other fraternal society, desiring to incorporate, shall make articles of incorporation in triplicate, and file one of such articles in the office of the secretary of state and another in the office of the county auditor of the county in which the meetings of such lodge, chapter or encampment are held; such articles shall be signed by the presiding officer and the secretary of such lodge, chapter or encampment, and attested by the seal thereof, and shall specify:

(1) The name of such lodge or other society, and the place of holding its meetings;

(2) The name of the grand body from which it derives its rights and powers as such lodge or society;

(3) The names of the presiding officer and the secretary having the custody of the seal of such lodge or society.

(4) What officers shall join in the execution of any contract by such lodge or society to give it force and effect in accordance with the usages of such lodges or society.

The secretary of state shall file such articles of incorporation in his office and issue a certificate of incorporation to any such lodge or other society upon the payment of the sum of five dollars.

Such lodge or other society shall be a body politic and corporate with all the powers and incidents of a corporation upon its compliance with sections one and two of this act: Provided, however, That such fraternal corporation shall not be subject to any license fee or other corporate tax of commercial corporations.

§ 4465a. Reincorporation of Orders.

Any lodge or society, or the members thereof, having heretofore attempted to incorporate as a body under the provisions of an act entitled "An act to provide for the incorporation of associations for social, charitable and educational purposes," approved March 21st, 1895, such lodge or society may incorporate under its original corporate name by complying with the provisions of sections one and two of this act: Provided, That such lodge or society shall attach to and file with the articles of incorporation provided for in this act a certificate duly signed, executed and attested by the officers of the said corporation consenting to such reincorporation and waiving all rights of the original corporation to such corporate name. [Approved Mar. 12, 1903; L. 1903, p. 118.]

§ 4466. Mutual Fire Insurance Companies — Organization of.

Any ten or more persons, residents of this state, who may desire to form a company or association for the purpose of mutual protection of the members thereof against loss by fire, shall make and subscribe written articles of incorporation in triplicate, and acknowledge the same before any officer authorized to take the acknowledgments of deeds, and file one of such articles in the office of the county auditor in which the principal place of business of the company is intended to be located, the second in the office of the secretary of state and retain the third in the possession of the company. Said articles shall state the corporate name of the company, the objects for which the same shall be formed, the time of its existence, not to exceed fifty years, the number of trustees and their names who shall manage the affairs of the company for such length of time, not less than two nor more than six months, as may be designated in said articles, and the name of the city, the town and county in which the principal place of business of the company is to be located; and upon filing of said articles with the insurance commissioner of this state, together with a statement cer-

tified under the oath of its president and secretary showing the amount of insurance and the number of risks pledged upon its books, and that it has otherwise complied with the provisions of this statute, then the insurance commissioner shall grant such company or association a certificate of authority to do business. Amendments may be made to the articles of incorporation by supplemental articles executed and filed the same as original articles. The trustees of any such company shall adopt such by-laws as they may deem proper for the government of its officers and the conduct of its affairs, and said by-laws shall also provide for the liability of its members for the payment of losses and expenses: Provided, That such liability shall not be less than a sum equal to one annual premium nor more than a sum equal to five times the amount of one annual premium, and such liability when so determined by the by-laws shall be the entire liability of each member.

Amended, Chap. 254, Laws '07,
§ 4466a. Policies—Limitation of Amount.

No policy of insurance shall be issued by any such company or association until not less than two hundred thousand dollars insurance has been subscribed and entered upon its books: Provided, however, That when any ten persons or companies operating manufacturing plants within this state shall have organized an association or corporation hereunder, such company can begin to issue policies under such conditions as its board of directors may provide.

No such company or corporation shall expose itself to a loss on any single risk for a greater amount than one thousand dollars for each seven hundred and fifty thousand dollars, or fraction thereof, insurance in force, unless protected by reinsurance: Provided, however, That when persons or companies owning and operating manufacturing plants shall have organized for mutual protection, as herein provided, such company or association so organized may issue policies at such times and in such amounts as may be provided by its board of trustees.

No policy of insurance shall be issued for more than three-fourths of the estimated cash value of the property insured.

Amended, Chap. 282, Laws 1907,
§ 4466b. Membership—Withdrawal.

Any member of such company or association may withdraw and be released from all liability as a member, by surrendering his policy of insurance in such company or association, and by giving five days' notice in writing of his intention to withdraw, and paying all dues and assessments due or pending at the time of his withdrawal; but the liability of members for their pro rata share of the losses of such company or association shall not cease until the foregoing conditions have been complied with.

§ 4466c. Annual Meetings.

Every company or association organized or operating under the provisions of this act shall hold an annual meeting of its members, at which each member shall be entitled to vote in the election of trustees, but no officer of such company or association shall be allowed to vote the proxy of any other member.

Amended Chap. 254, Laws 1907.
§ 4466d. **President and Secretary—Duties of.**

It shall be the duty of the president and secretary of such company or association doing business under the provisions of this act, on or before the fifteenth day of January of each year, to prepare and file in the office of the insurance commissioner of this state a statement certified under the oath of said president and secretary, exhibiting the following facts and items:

First. The amount of the property at risk on the 31st day of December next preceding the date of the report; the amount of risks added during the previous year; the amount of risks canceled, withdrawn or terminated during the year, and the largest amount of insurance carried on any single risk.

Second. The amount of cash received with applications, whether paid to agents or officers, for insurance during the year; the amount received from assessments levied; the amount received from all other sources, and the total income.

Third. The amount paid for losses during the year; the amount paid officers and trustees; the amount paid office help; the amount paid agents; the amount of all other expenditures, and the total expenditures.

Fourth. The amount of cash on hand; the amount and nature of all other assets, and the total assets.

Fifth. The amount of losses reported during the year and unpaid; the amount and nature of all other liabilities, and the total liabilities; and no such company or association shall use or exhibit for advertising purposes any other financial statement than the one referred to in this section, or a copy thereof.

§ 4466e. **Insolvency—Violations of Law—Examinations—Revocations of License.**

Whenever it shall appear to the insurance commissioner, from its annual report, or otherwise, that the solvency of any mutual company or association doing business under this act is impaired, or that the provisions of this act are being violated, he shall immediately make examination of such company or association, and for that purpose he shall have access to all books and papers of the company or association and shall have power to administer oaths and to examine the various officers thereof as to all matters pertaining to the business of such company or association, and also such other witnesses as may be material or important. If the unpaid losses of the company amount to twenty-five cents on each one hundred (\$100.00) dollars, insurance actually in force, or if the laws of the state are being violated by the company or association the commissioner shall order the laws complied with and require all losses to be paid within sixty days. If such company or association shall fail to comply with such requirements within sixty days the commissioner shall revoke its license to do business until all liabilities shall have been paid in full and the laws are complied with in all respects. And whenever the commissioner shall make an examination as provided in this section, he shall make a written report of such examination, together with a sworn statement of the expense of such examination, which amount and no more shall be collected from such examined company or association, and file the same in his office. Should any company or association issue a policy of insurance without a license from the insurance department of

this state, or after the license of such company or association has been suspended or revoked it shall be liable to a penalty of one hundred dollars for each offense: Provided, however, That the insurance commissioner shall have no power or authority to refuse a mutual fire insurance company or association a license to do business in this state if such company or association is solvent and has fully complied with the laws of this state: And, provided further, That such insurance commissioner shall have no authority to revoke or suspend the license of any association or corporation transacting the business of mutual fire insurance, if such association or corporation is solvent and complies with the provisions of this act.

§ 4466f. Fees to Insurance Commissioner.

Each insurance company or association doing business under this act shall pay to the insurance commissioner:

For filing articles of incorporation.....	\$10.00
For annual license to do business in this state.....	10.00
For filing each annual statement.....	10.00
For annual license of each agent or solicitor of such company.....	2.00

§ 4466g. Assessments. *Amended; Chap. 254, Sec. 4, Laws '07.*

All assessments levied shall be at the rate of fifteen per cent of the amount of the annual premium charged by stock insurance companies, as set forth in rate book No. four of the issue of 1900, or the special rate books used by said stock companies: Provided, Any association or company operating under the provisions of this act may, in the discretion of its trustees, accept cash premiums for the term of the policy in lieu of assessments levied upon its members.

§ 4466h. Existing Companies—Privileges.

Any mutual fire insurance company or association organized and now doing business under the provisions of chapter 132 of the Session Laws of 1899 is hereby authorized to transact business hereafter under the provisions of this act, by filing in the office of the insurance commissioner of this state a certificate of its election or intention to do so.

Any company or association organized or operating under this act shall be exempt from all other insurance laws of this state.

The term "persons" as used in this act, shall be held to include corporations; and any such corporation may become a member of any association or corporation organized under this act.

Chapter 132 of the Session Laws of 1899 is hereby repealed.

An emergency exists and this act shall take effect immediately. [Approved Mar. 14, 1903; L. 1903, p. 146.]

§ 4488. Husband and wife—Separate estate of husband—Increase.—Under General Statutes, section 1397, investing the wife with a separate estate in the "rents, issues and profits" of her separate property, she is entitled to the increase of livestock belonging to her; and such increase

cannot be subjected to the debts of the community: *Harris v. Van de Vanter*, 17 Wash. 489, 50 Pac. 50.

§ 4489. Married women—Separate estate of.—Personal judgment against a married woman and the subjection of her separate estate thereto is warranted for liabilities incurred as surety upon an

official bond: *Kittitas Co. v. Travers*, 16 Wash. 528, 48 Pac. 340.

A homestead settled upon and improved by a woman before marriage, who continued to reside there, together with her husband, after her marriage, and to whom a patent was issued therefor after final proof was made, is her separate property: *Forker v. Henry*, 21 Wash. 235, 57 Pac. 811.

In an action against husband and wife upon a promissory note executed by the husband, the wife cannot be held personally bound by a default judgment, of whose entry she had no notice, when the complaint states no cause of action against her, but merely recites she is the wife of the maker of the note: *Freundt v. Hahn*, 28 Wash. 117, 68 Pac. 184.

In an action by a wife to recover money loaned, a nonsuit, either on the ground that the money was community property, or that the money borrowed was paid to plaintiff's husband, was erroneous, where the evidence showed that when the wife first came to the state ten years before she owned as separate property \$1,000 in cash which she let her husband use in the transaction of business for the benefit of the community; that \$200 of this sum was repaid to her some three years subsequently, and that about five years subsequent to such repayment, the husband handed her \$1,200, which he had received on a sale, and told her to keep out what was coming to her; that she took \$800, and of this sum loaned \$500 as her separate property to defendant with her husband's knowledge and consent, \$370 of which had been repaid by defendant; that \$2,350 was paid by defendant to her husband for the husband's interest in certain milk business, and that the bill of sale included a release for work, wages and money loaned, but that the wife refused to sign same, although the balance of the money claimed by her from defendant was left in his attorney's hands to repay her if she would sign the bill of sale: *Sherlock v. Penny*, 28 Wash. 170, 68 Pac. 452.

§ 4490. Where property is of the community.—A finding by the court that certain real estate is community property, and not the separate property of the wife, will not be disturbed, when the evidence shows that title was taken in the name of the wife, subsequent to marriage, and that the larger portion of the purchase price was undisputedly paid from community funds, and that the dwelling erected thereon had been paid for with community funds, since the presumption as to the community character of the property raised by such facts is not overcome by evidence that at the time of purchase the land was intended as a gift to

the wife: *Woodland Lumber Co. v. Link*, 16 Wash. 72, 47 Pac. 222.

Although property acquired subsequent to marriage in the conduct of business by either spouse raises a presumption in favor of its being community property, such presumption is rebuttable: *Brookman v. State Ins. Co.*, 18 Wash. 308, 51 Pac. 395.

Personalty purchased by a married woman having no separate estate at the time, with money borrowed by her, constitutes community property, under Ballinger's Code, sections 4488-4490: *Main v. Scholl*, 20 Wash. 201, 54 Pac. 1125.

Under the laws of this state, lands acquired after marriage by a deed of purchase expressing a money consideration are presumed to be community property; and this presumption can be rebutted only by clear and convincing proof that the consideration was furnished out of the grantee's separate property: *Dormitzer v. German Savings etc. Soc.*, 23 Wash. 132, 62 Pac. 862.

The laws of another state in relation to the property rights of husband and wife, as to property acquired there during marriage, will be presumed, in the absence of proof, to be the same as those of this state, when the proceeds of such property have been reinvested here: *Id.*

Where held not community property.—

The presumption that lands acquired by purchase after marriage are community property is overcome in a case where it appears that the husband, prior to marriage, had accumulated over \$23,000 worth of land in the business of buying, improving and selling real estate, of which he sold about \$20,000 worth within a year after his marriage and bought other land with the proceeds, including that in controversy, without the use of any money of his wife or of the community in the purchase of the same: *Austin v. Clifford*, 24 Wash. 172, 64 Pac. 155.

Where there is no proof of when the marriage relation between husband and wife was assumed, and nothing to show that a promissory note in her favor was community property, the maker of the note is not entitled to offset a bar bill due him from the husband against the amount due on the note to the wife: *Bunker v. Hatrup*, 20 Wash. 318, 55 Pac. 122.

The presumption that lands purchased by the husband during coverture were community property is overcome, where it is shown that his earnings during coverture were barely sufficient to support his family and that he had separate property in the shape of cash more than sufficient to pay the price of the lands so acquired: *Mattson v. Mattson*, 29 Wash. 417, 69 Pac. 1087.

Community debts.—The earnings of the wife being community property whose management and control is vested in her husband, under the statutes of this state, a mere general agreement that the wife's earnings shall be her separate property is not sufficient to constitute a gift, and hence in such a case the husband must be joined as plaintiff in an action by the wife to recover: *Sherlock v. Denny*, 28 Wash. 171, 68 Pac. 452.

Where a subscription by the husband to the capital stock of a banking corporation was for the benefit of the community, the superadded liability imposed on stockholders in cases of insolvency is one which may be enforced against community property: *Shuey v. Adair*, 24 Wash. 378, 64 Pac. 536.

The property of the community is liable upon a note executed by the husband merely as an accommodation to a bank in which he is a director: *Shuey v. Holmes*, 22 Wash. 194, 60 Pac. 402.

Where a husband who is a stockholder in a corporation signs a note of the corporation as a surety, the property of the community is liable, if his corporate stock was community property: *Allen v. Chambers*, 22 Wash. 304, 60 Pac. 1128.

In an action in this state upon a promissory note executed in the state of Montana by the husband alone, for money borrowed for the purpose of buying a lot and erecting a house thereon which was used by his family as a home, the debt will be presumed to be a community debt, in the absence of proof of the Montana law showing the contrary, and judgment thereon may be enforced against the community property of defendants in this state: *Clark v. Eltinge*, 29 Wash. 215, 69 Pac. 736.

The presumption as to a judgment, in the absence of proof, is that it is based upon a community debt: *Goetzinger v. Rosenfeld*, 16 Wash. 392, 47 Pac. 882.

Where a promissory note is executed by the husband as principal, it raises a presumption in favor of the community character of the debt: *Reed v. Loney*, 22 Wash. 433, 61 Pac. 41.

A note executed by a husband, and delivered solely as an accommodation to the bank to which it is made payable, is not valid as against the community, where it was not executed in behalf of the community, and neither husband nor wife had any interest in the bank at the time: *Shuey v. Holmes*, 20 Wash. 13, 54 Pac. 540.

Personal, subject to payment of personal debts of spouse.—Community personalty is subject to execution upon a judgment for the separate debt of one of the spouses, even as against community creditors, when the latter have not obtained a prior specific lien on the prop-

erty: *Morse v. Estabrook*, 19 Wash. 92, 67 Am. St. Rep. 723, 52 Pac. 531.

Of second wife in prior community.—Upon the dissolution of the community by the death of the wife, the remarriage and death of the husband, pending administration upon the community estate, will not create a charge in favor of his second wife upon his interest in the community property, which would be superior either to the claims of community creditors or to the rights of heirs and devisees in the first wife's one-half interest: *In re Cannon's Estate*, 18 Wash. 101, 50 Pac. 1021.

Parties to suits affecting community property.—In an action to compel the specific performance of a contract for the conveyance of land, which is presumptively community property, and nothing is shown to overcome that presumption, the wife is a necessary party defendant: *Armstrong v. Oakley*, 23 Wash. 123, 62 Pac. 499.

The husband being charged by statute with the management and control of community property, the wife is not a necessary party to an action for breach of a contract made by the husband, which, if performed by defendant, would have been instrumental in increasing the value of their community realty: *Belt v. Washington Water Power Co.*, 24 Wash. 388, 64 Pac. 525.

Where the husband has customarily conducted all the community property business of himself and wife, and the wife knew of a contract between her husband and plaintiff regarding her husband's purchasing certain property in his own name in trust for plaintiff, such contract is enforceable against the wife, although she was not a party thereto: *Young v. Porter*, 27 Wash. 551, 68 Pac. 362.

In an action upon a promissory note executed by the husband alone the wife is a proper party, for the purpose of determining whether the judgment should be enforceable against community property: *Clark v. Eltinge*, 29 Wash. 215, 69 Pac. 736.

In an action to recover the possession and the rents and profits of community real property, the wife is a necessary party plaintiff with the husband, under the provisions of Ballinger's Code, section 4491, which expressly prohibits the husband from conveying or encumbering community realty, unless the wife joins with him: *Lownsdale v. Gray's Harbor Boom Co.*, 21 Wash. 542, 58 Pac. 663.

A judgment creditor has a right to have it judicially appear that his judgment is a community debt, although it may be true that community property is prima facie liable for a debt contracted

by the husband: *Allen v. Chambers*, 18 Wash. 341, 51 Pac. 478.

Mandamus will lie against a sheriff, at the suit of a wife, either in case of abandonment by her husband or in his absence, to compel the sheriff, who has levied upon community property, to set aside that portion which is exempt by statute from execution: *State ex rel. Achey v. Creech*, 18 Wash. 186, 51 Pac. 363.

§ 4491. Community property, conveyance of.—Where the interest of the husband in realty acquired by the community composed of himself and wife, was levied upon and sold under a judgment for a debt incurred by him after the death of his wife, which sale was acquiesced in by him and subsequently upheld by the court, in an action by the purchaser to quiet title against the wife's heirs, wherein the purchaser was awarded the husband's interest in such realty, the purchaser must be deemed to have succeeded to all the rights of the husband in the realty to such an extent as to vest him with an interest therein sufficient to warrant his right to question the attempted exercise of dominion thereover by an administrator de bonis non of the wife's estate: *Griffin v. Warburton*, 23 Wash. 231, 62 Pac. 765.

A voluntary conveyance by a husband to his wife of community lands is voidable as against existing creditors, when the community is not possessed of sufficient other property to satisfy the community indebtedness. Where a husband has attempted to convey community lands to the wife by a transfer which is fraudulent as to creditors, a subsequent transfer to his wife of separate property in consideration of a reconveyance of such lands formerly conveyed to her is voluntary, without consideration, and fraudulent as to creditors: *Carheek v. Boston Nat. Bank*, 16 Wash. 399, 47 Pac. 884.

A conveyance of community lands by a husband to a woman, with whom he was living in adultery as his wife, may be set aside in an action by the lawful wife: *Kimble v. Kimble*, 17 Wash. 75, 49 Pac. 216.

A conveyance to a married man for a consideration consisting partly of his separate property, which is not shown to have any value, and partly of community property, will, in the absence of evidence of fraud, be presumed as a conveyance to the community: *Hanna v. Reeves*, 22 Wash. 6, 60 Pac. 62.

A conveyance by the husband to his wife of community realty is not a fraudulent conveyance as against creditors of the husband upon his separate debts: *Deering v. Holcomb*, 26 Wash. 588, 67 Pac. 240, 561.

§§ 4502-4504. Married women — Property rights.—Under the statutes of this state (Bal. Code, §§ 4502-4504), a married woman has the right to lease a farm and prosecute the business of farming as her separate business, entitling her to the products and increase of the business as her separate property: *Brookman v. State Ins. Co.*, 18 Wash. 308, 51 Pac. 395.

§ 4503. A married woman may maintain an action for damages for the alienation of her husband's affections, in her own name, without her husband joining her, under General Statutes, sections 1408, 1409: *Beach v. Brown*, 20 Wash. 266, 72 Am. St. Rep. 98, 55 Pac. 46.

§ 4517. Conveyances—Contracts are not. A contract for the conveyance of land, in order to be enforceable in equity, need not be executed and acknowledged with all the solemnity of a conveyance: *Anderson v. Wallace Lumber Co.*, 30 Wash. 147, 70 Pac. 247.

§ 4518. Deeds—Insufficient description. A description of premises in a deed is void for uncertainty, when it merely describes the land as "east half, northeast quarter and northwest quarter of northeast quarter of section 13, in town 35, range eight east," without specifying the meridian nor whether the township is north or south, nor the county or state in which the land is situated (*Carson v. Railsback*, 3 Wash. Ter. 168, distinguished): *Hartigan v. Hoffman*, 16 Wash. 34, 47 Pac. 217.

A deed conveying the "west half" of a fractional lot according to the government survey, which contains less than a legal subdivision of forty acres, conveys an equal half of the lot in area, and does not restrict the conveyance to the quantity of land lying west of a line drawn north and south midway between, and parallel to, the side lines of said lot. There being no ambiguity apparent upon the face of a deed conveying the west half of a fractional lot of land, parol evidence is inadmissible for the purpose of establishing the intent of the parties: *Owen v. Henderson*, 16 Wash. 39, 58 Am. St. Rep. 17, 47 Pac. 215.

§ 4528. Acknowledgments in other states—Certificate.—A deed of assignment made in another state and properly acknowledged, but defectively certified by reason of the absence of the notary's seal and of the certificate of a clerk of a court of record authenticating such notary and his signature, as required by Ballinger's Code, section 4528, is sufficient to pass the equitable title to realty in this state to the assignee, and enable him to maintain action to quiet title thereto, under Ballinger's Code, section 5508, as against foreign creditors, inasmuch as they do not occupy the relation of bona fide purchasers: *Bloomington v. Weil*, 29 Wash. 612, 70 Pac. 94.

§ 4530. Acknowledgments of Conveyances Taken in Foreign Countries, by Whom.

Acknowledgments of all deeds, mortgages and other instruments in writing that are required to be acknowledged by any law of this state may be made and taken in any foreign country beyond the limits of the United States, before any minister plenipotentiary, secretary of legation, charge d'affaires, consul general, consul, vice-consul, consular agent, or commercial agent appointed by the government of the United States, or before any notary public or before the proper officer of any court of said country, or before the mayor or other chief magistrate of any city, town or other municipal corporation therein. All deeds, mortgages and other instruments at any time heretofore acknowledged according to the provisions of this act are hereby declared legal and valid: Provided, That the provisions of this section shall not affect any existing rights. [Amendment, approved Mar. 1, 1901; L. 1901, p. 65.]

§ 4533. Conveyances—Acknowledgments. The failure of a notary to add to his certificate of acknowledgment of a mortgage a statement of his place of residence is not a material defect such as would in-

validate the mortgage as against third parties, when his certificate was regular in all other respects: *Griffin v. Catlin*, 25 Wash. 474, 87 Am. St. Rep. 782, 65 Pac. 755.

§ 4533a. Form of Certificate of Acknowledgment.

Certificates of acknowledgment of an instrument acknowledged by a corporation substantially in the following form shall be sufficient:

State of _____,
County of _____. } ss.

On this ____ day of _____, A. D., 190—, before me personally appeared _____, to me known to be the (president, vice-president, secretary, treasurer, or other authorized officer or agent, as the case may be) of the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation. for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

(Signature and title of officer.)

[Approved Mar. 16, 1903; L. 1903, p. 245.]

§ 4535. Recording law — Priorities. — Parol proof is admissible for the purpose of determining the priority of lien between a judgment entered and a mortgage recorded on the same day. Where a mortgage executed to secure an antecedent debt is recorded on the same day that a judgment is entered against the mortgagor, the equities between the two are equal, and they should be prorated in the proceeds from the real estate covered by both liens, when it appears that the mortgagee had knowledge of the pendency of the action in which the judgment was

rendered and had filed his mortgage for record but a short time prior to the entry of judgment: *Goetzinger v. Rosenfeld*, 16 Wash. 393, 47 Pac. 882.

Where the execution of a deed and of a purchase money mortgage of the same premises are contemporaneous, the lien of a judgment creditor of the grantee is inferior to that of the mortgagee: *Bisbee v. Carey*, 17 Wash. 224, 49 Pac. 220.

An unrecorded mortgage is entitled to priority over a subsequent judgment, since a judgment creditor is not a bona fide purchaser within the meaning of Bal-

linger's Code, section 4535, which declares mortgages valid, as against bona fide purchasers from the date of their filing for record: *Dawson v. McCarty*, 21 Wash. 314, 75 Am. St. Rep. 841, 57 Pac. 816.

An execution creditor who purchases real estate at a sale under his own levy, is not such a bona fide purchaser as to be entitled to priority over an unrecorded deed, within the meaning of General Statutes, section 1439, which provides that "all deeds and mortgages shall be recorded in the office of the county auditor of the county where the land is situated, and shall be valid as against bona fide purchasers from the date of their filing or recording in said office": *Hacker v. White*, 22 Wash. 415, 11 Am. St. Rep. 945, 60 Pac. 1114.

Upon the foreclosure of a mortgage against a subsequent grantee of the mortgaged premises, who has not assumed and agreed to pay the debt, the mortgagee is entitled to only such rate of interest as is specified in the mortgage as recorded, although the notes themselves specify a greater rate: *George v. Butler*, 26 Wash. 456, 90 Am. St. Rep. 756, 67 Pac. 263.

Title acquired by an execution creditor under his own levy and sale will not prevail over a prior unrecorded deed: *Rohrer v. Snyder*, 29 Wash. 200, 69 Pac. 748.

When one in whose name the record title stands informs a subsequent grantee that the land is not hers, that she had already turned it over to another person in satisfaction of a mortgage, such subsequent grantee has sufficient notice to put him on inquiry, and is not an innocent purchaser as against the grantee in a prior unrecorded deed: *Bigelow v. Brewer*, 29 Wash. 671, 70 Pac. 129.

§ 4535. Record, effect of.—A grantee in a deed who takes the conveyance in his own name for the accommodation of another is bound by the notice the real party in interest has of a prior unrecorded deed: *Bigelow v. Brewer*, 29 Wash. 671, 70 Pac. 129.

Under the rule that in a voluntary sale to an innocent purchaser everything passes that the grantor was apparently possessed of, evidence is inadmissible to show that a judgment was in fact rendered before the delivery of a deed to plaintiffs' grantor or the payment of any part of the consideration by him, where the deed purported to have been executed and delivered prior to judgment and plaintiffs were not shown to have had notice that it was not delivered at the time it purported to be: *Dow v. Ballard*, 28 Wash. 87, 68 Pac. 176.

§ 4535a. Property Rights—Mortgages of Mixed Property—Recording and Effect of.

Any mortgage upon property of a mixed character, consisting in part of real estate and in part of personal property, and particularly upon railroad property, in the state of Washington, shall be admitted to record and be recorded in the several counties wherein the property is located as a real estate mortgage when acknowledged in the manner provided by law, and the original of such mortgage or a copy thereof certified by the auditor of any county in the state of Washington wherein the original has been recorded may be filed in a file to be kept for that purpose in the office of the auditor of the county wherein such property is situated, and said record and filing shall constitute notice to all persons of the existence of the mortgage lien provided for by said mortgage.

In case any mortgage covering mixed real estate and personal property has heretofore been or may hereafter be recorded in the record of mortgages of real estate, or in the record of chattel mortgages, and in case the affidavit required by law to be attached to chattel mortgages was not or shall not be recorded as a part of said chattel mortgage but has been or shall be afterwards recorded upon a separate page of said record and a reference made at the place of the original record of said real estate or chattel mortgage to the said affidavit stating the volume and page on which the same may be found, said record shall constitute notice from and after the date of the filing of said affidavit, the same as if the affidavit and mortgage had been recorded together at the same time and at the same place. [Approved Mar. 13, 1899; L. 1899, p. 118.]

§ 4540. Power of attorney—Husband and wife.—A general power of attorney by a wife to her husband to sell land will not authorize him to make a dedication for street purposes: *Anderson v. Bigelow*, 16 Wash. 198, 47 Pac. 426.

§ 4544. Community property—Bona fide purchaser of.—The act of March 9, 1891, provides that whenever any person having in his name the legal title of record to any real estate, a deed of such real estate from the person holding the legal record title to a bona fide purchaser shall be sufficient to vest in such purchaser the full legal and equitable title, free and clear of all claims of any persons not appearing of record, is restricted by its title

to the protection of innocent purchasers of community property only: *Sengfelder v. Hill*, 21 Wash. 371, 58 Pac. 250.

§ 4545. Community property—Bona fide purchaser.—The failure of one spouse to file in the office of the county auditor an instrument setting up his or her claim in community property held in the name of the other spouse, does not estop such spouse from claiming an interest therein, except as against such bona fide purchasers as purchase without knowledge of the existence of the marriage relation, or who could not, by the exercise of reasonable diligence, have obtained such knowledge: *Dane v. Daniel*, 23 Wash. 380, 63 Pac. 268.

§ 4553. Permitting Indians to Sell and Convey Lands.

Any Indian who owns within this state any land or real estate allotted to him by the government of the United States may with the consent of Congress, either special or general, sell and convey by deed made, executed and acknowledged before any officer authorized to take acknowledgments to deeds within this state, any stone, mineral, petroleum or timber contained on said land or the fee thereof and such conveyance shall have the same effect as a deed of any other person or persons within this state; it being the intention of this act to remove from Indians residing in this state all existing disabilities relating to alienation of their real estate. [Approved Mar. 13, 1899; L. 1899, p. 155.]

§ 4558. Chattel mortgages—Recording of.—A waterworks plant and system, with its pipes, mains, fixtures, rights, privileges and franchises, are personal property when the land to which they are attached does not belong to the waterworks company, and it has but a limited easement in the streets and lands through which its pipes are laid for the delivery of water; and a mortgage thereof, when recorded in the record of real estate mortgages, instead of that of chattel mortgages, does not afford constructive notice, under Ballinger's Code, sections 4558, 4559, which provide that a mortgage of personal property is void as against creditors of the mortgagor, or subsequent purchasers or encumbrancers for value and in good faith, unless acknowledged and recorded in the office of the county auditor of the county in which the property is situated, in a book kept exclusively for that purpose: *Dunsmuir v. Port Angeles*, 24 Wash. 104, 63 Pac. 1095.

One performing labor for the mortgagor with actual knowledge of the existence of an unrecorded chattel mortgage is a creditor and entitled to priority over the mortgagee, even though he may have filed a subsequent lien against the property

under the provisions of the employee's act of 1897: *Blumauer v. Clock*, 24 Wash. 596, 85 Am. St. Rep. 966, 64 Pac. 844.

Right of possession of property.—Where a chattel mortgage gives the mortgagee the right, in case of default in payment, to take possession of the goods and retain them, such right of possession may be enforced by an action of claim and delivery: *Bancroft-Whitney Co. v. Gowan*, 24 Wash. 66, 63 Pac. 1111.

Affidavit of good faith.—An instrument in form a chattel mortgage is invalid as against a creditor of, or bona fide purchaser from, the mortgagor, when the instrument is not accompanied by an affidavit of good faith, and has not been acknowledged and recorded: *Carstens v. Moyer*, 22 Wash. 61, 60 Pac. 51.

§ 4559. Effect of failure to record.—The inclusion of personal property in a real estate mortgage and the recording of the instrument in the records devoted to that class of mortgages does not, under General Statutes, sections 1648, 1649, afford constructive notice of any lien upon the personal property, and is void as to creditors: *Manhattan Trust Co. v. Seattle Coal etc. Co.*, 16 Wash. 499, 48 Pac. 333, 737.

§ 4559a. Mortgages of Mixed Property—What May be Mortgaged—Crops Before Planting Excluded.

Mortgages may be made upon all kinds of personal property, and upon the rolling stock of a railroad company and upon all kinds of machinery, and upon boats and vessels, and upon portable mills and such like property and upon growing crops and upon crops before the seed thereof shall have been sown or planted: Provided, That the mortgaging of crops before the seed thereof shall have been sown or planted, for more than one year in advance, is hereby forbidden, and all securities or mortgages hereafter executed on such unsown or unplanted crops are declared void and of no effect, unless such crops are to be sown or planted within one year from the time of the execution of the mortgage.

Recording.

Every such instrument within ten days from the time of the execution thereof shall be filed in the office of the county auditor of the county in which the mortgaged property is situated, and such auditor shall file all such instruments when presented for the purpose, upon the payment of the proper fees therefor, indorse thereon the time of reception, the number thereof, and shall enter in a suitable book to be provided by him at the expense of his county, with an alphabetical index thereto, used exclusively for that purpose, ruled into separate columns with appropriate heads: "The time of filing," "Name of mortgagor," "Name of mortgagee," "Date of instrument," "Amount secured," "When due," and "Date of release." An index to said book shall be kept in the manner required for indexing deeds to real estate, and the county auditor shall receive for the services required by this act the sum of fifteen cents for every instrument, and the moneys so collected shall be accounted for as other fees of his office. Such instrument shall remain on file for the inspection of the public.

Effect of—Affidavit of Renewal.

Every mortgage filed and indexed in pursuance of this act shall be held and considered to be full and sufficient notice to all the world, of the existence and conditions thereof, but shall cease to be notice, as against creditors of the mortgagors and subsequent purchasers and mortgagees in good faith, after the expiration of the time such mortgage becomes due, unless before the expiration of two years after the time such mortgage becomes due, the mortgagee, his agent or attorney, shall make and file as aforesaid an affidavit setting forth the amount due upon the mortgage, which affidavit shall be annexed to the instrument to which it relates and the auditor shall indorse on said affidavit the time it was filed.

Effect of Filing Affidavit:

The effect of any such affidavit shall not continue beyond one year from the time when such mortgage would otherwise cease to be valid as against such creditors and subsequent purchasers and mortgagees in good faith; unless before the time when any such mortgage would otherwise cease to be valid, as aforesaid, a similar affidavit be filed and annexed as provided in the preceding section, and with like effect.

Form.

That a mortgage contemplated by this act which is given to secure the sum of one hundred dollars or less, exclusive of interest and costs of foreclosure, may be made in substantially the following form:

This mortgage made this — day of — in the year — by A. B., of —, mortgagor, to C. D., of — mortgagee,

Witnesseth: That the mortgagor mortgages to the mortgagee (here describe the property) as security for the payment to him of — dollars, on (or before) the — day of — in the year —, with interest thereon (or security for the payment of a note or obligation, describing it, etc.)

A. B.

Signed and delivered in the presence of

E. F.

G. H.

That a mortgage given to secure the sum of \$300 or more exclusive of interest, costs and attorneys or counsel fees may be recorded and indexed with like force and effect as if this act had not been passed, but such mortgage or a copy thereof must also be filed and indexed as required by this act.

Property in Two or More Counties.

That in case the property mortgaged exists in two or more counties, a copy of such mortgage may be filed in each of such counties with like force and effect as the original mortgage.

Discharge on Records—How Made.

Whenever any mortgage, filed under the provisions of this act, has been paid, or the conditions thereof satisfied, the mortgagee, or his assignee or personal representatives shall make to the mortgagor, his assignee or personal representatives, a certificate in writing, under his hand, stating the date of the mortgage and a description of the property thereby mortgaged, and that the same has been discharged in full; and on delivering said certificate in writing to the officer with whom such mortgage is filed, the said officer shall deliver said mortgage to the person producing such certificate on payment of the sum of ten cents for filing said certificate, and shall file said certificate in his office, indorsing thereon the true date of filing the same, and shall keep and preserve said certificate among the records in his office, and shall write the word "satisfied" with the date opposite to such mortgage, in the index in which such mortgages are entered under the heading "release." [Approved Mar. 13, 1899; L. 1899, p. 157.]

§ 4563. Record Satisfaction of Mortgages.

Whenever the amount due on any mortgage is paid, the mortgagee, his legal representatives or assigns, shall, at the request of any person interested in the property mortgaged, acknowledge satisfaction of the same on the margin of the page upon which the mortgage is recorded (which marginal satisfaction shall be at the time attested by the auditor or his deputy), or by executing an instrument in writing referring to the mortgage by the volume and page of the record or otherwise sufficiently describing it and acknowledging satisfaction in full there-

of. Said instrument shall be duly acknowledged, and upon request shall be recorded in the county wherein the mortgaged property is situated. Every instrument of writing heretofore recorded and purporting to be a satisfaction of mortgage, which sufficiently describes the mortgage which it purports to satisfy so that the same may be readily identified, and which has been duly acknowledged before an officer authorized by law to take acknowledgments or oaths, is hereby declared legal and valid, and a certified copy of the record thereof is hereby constituted prima facie evidence of such satisfaction. [Amendment, approved Mar. 6, 1901; L. 1901, p. 64.]

§ 4563. Mortgage—Release by administrator of his own mortgage.—The cancellation by an administrator of his own mortgage, not for the purpose of applying any moneys due thereon to the benefit of the estate, but for the purpose of procuring an individual loan by means of another mortgage upon the property released, is void: *Eastman v. Landon*, 17 Wash. 48, 48 Pac. 739.

§ 4565. Chattel mortgages, assignments of.—A purchaser is not required to make inquiry beyond the records of the county auditor's office, and where without notice of an outstanding unrecorded assignment he purchases the mortgaged property for a valuable consideration on the faith of a satisfaction by the mortgagee on the records, he obtains a clear title thereto: *Gottstein v. Harrington*, 25 Wash. 509, 65 Pac. 753.

§ 4568. Leases, validity of.—The fact that Ballinger's Code, section 4568, provides that "leases may be in writing or print, or partly in writing and partly in print, and shall be legal and valid for any term or period not exceeding one year, without acknowledgment, witnesses, or seals," does not change the rule that leases for the period of one year are not within the statute of frauds: *Ward v. Hinckley*, 26 Wash. 539, 67 Pac. 220.

For term longer than one year.—After a lease, invalid for want of acknowledgment, has been fully performed, neither party thereto can take advantage of its invalidity so as to relieve himself of obligations incurred under it: *Mounts v. Goranson*, 29 Wash. 262, 69 Pac. 740.

§ 4569. Notice to quit.—Where notice to quit has been served on a tenant more than twenty days prior to the expiration of his monthly tenancy, as required by statute, the fact that the notice gives him all of the first day of the succeeding month in which to vacate does not vitiate the notice, when the statute does not require the notice to specify that the tenant must remove on the day his tenancy is concluded: *Harris v. Halverson*, 23 Wash. 779, 63 Pac. 549.

An agreement by a landlord to an assignment of a parol lease for an indefinite period, under which rent was payable

monthly, would not create other than a monthly tenancy, where the landlord merely agreed that the assignment was "all right as long as she pays her rent and keeps a straight house": *Schreiner v. Stanton*, 26 Wash. 563, 67 Pac. 219.

Where a tenancy started as one for an indefinite time, with monthly rent reserved, the fact that, without any agreement for a change in the original tenancy, the tenant began paying rent for quarterly periods, which was accepted at her own request and for her own accommodation, would not operate to change a tenancy from month to month into one for quarterly periods: *London etc. Bank v. Curtis*, 27 Wash. 656, 68 Pac. 329.

§ 4575. Frauds and perjuries—Agreement within statute of.—An agreement between two parties to prospect together and share alike the benefits of any discovery or location of mining properties is not within the statute of frauds: *Raymond v. Johnson*, 17 Wash. 232, 61 Am. St. Rep. 908, 49 Pac. 492.

A parol agreement to lease premises for a term to begin in the future, upon the condition precedent that the prospective lessee shall prepare a written lease for signature and pay the rental in advance, cannot be specifically enforced, where these conditions were not performed nor tender made, even though such lessee may have taken possession of the premises, if such possession was taken without the consent or request of the lessor: *Page v. Carnine*, 29 Wash. 387, 69 Pac. 1093.

A person having a claim against another for damages sounding in tort is a creditor of that other within the meaning of the statute giving creditors the right to question transfers of property made to hinder, delay and defraud creditors: *Bates v. Drake*, 28 Wash. 447, 68 Pac. 961.

§ 4576. Promise to pay debt of another. A promise by the purchaser of certain logs, as part consideration therefor, to assume and pay the indebtedness of the seller to a third party, is an original promise, and not within the statute of frauds: *Don Yook v. Washington Mill Co.*, 16 Wash. 459, 47 Pac. 964.

A verbal promise to pay the debt of another, as consideration for a transfer of

property between promisor and promisee, even though the original debt is not discharged by the new promise, does not fall within the statute of frauds, as such verbal promise constitutes merely an agreement of the promisor to pay his own debt: *Gilmore v. Skookum Box Factory*, 20 Wash. 703, 56 Pac. 934.

An agreement to pay the debt of another as consideration for another contract between the promisor and promisee is not within the statute of frauds: *Dimmick v. Collins*, 24 Wash. 78, 63 Pac. 1101.

A promise by a debtor to pay the debt of his creditor to a third party, made in consideration of receiving credit upon his own indebtedness, is an original promise, and not within the statute of frauds: *Nordby v. Winsor*, 24 Wash. 535, 64 Pac. 726.

Where a guaranty to answer for the debt of another had been executed, parol evidence was admissible to prove the existence of the contract: *Dudley v. Duvall*, 29 Wash. 528, 70 Pac. 68.

The oral promise of defendants to pay certain written orders drawn on them by their agent in payment of his own indebtedness, in case there was any money due him from them at the termination of his employment, is unenforceable, under Ballinger's Code, section 4576, subdivision 2, as being a promise to answer for the debt of another, and not in writing by the persons sought to be charged: *Barto v. Phillips*, 28 Wash. 482, 68 Pac. 895.

§ 4580. Conveyances between husband and wife—Burden of proof as to good

faith.—In an action by a wife to enjoin the sale upon execution, in satisfaction of a judgment against her husband, of land deeded to her by her husband, the burden of proof is upon the wife, under General Statutes, section 1455, to show the good faith of the transaction; and, after attempting by pleading and proof to establish that fact, she is not in a position to object to a finding of fraud made by the court in the absence of allegations thereof in the pleadings: *Shoemaker v. Stimson*, 16 Wash. 1, 47 Pac. 218.

Under Ballinger's Code, section 4580, which provides that in every case where any question arises as to the good faith of any transaction between husband and wife the burden of proof shall be upon the party asserting the good faith, a deed by a husband to his wife should be deemed fraudulent, where it appears that the husband obtained a conveyance and the possession of valuable property without consideration, and that his wife actively participated in the transaction; that the deed by husband to wife was made after the commencement of suit by the husband's grantors to set aside the deed to him; that the husband and wife had made inconsistent statements as to which of them was the owner before suit, and after suit it was claimed the consideration for the conveyance between the spouses was the payment of moneys out of the wife's separate estate to the husband, from moneys he had in his hands as her agent, but it was not shown how much money of hers he had, nor what sum was actually paid by her for the property: *Bates v. Drake*, 28 Wash. 448, 68 Pac. 961.

§ 4585. Conditional Sales of Personal Property.

That all conditional sales of personal property, or leases thereof, containing a conditional right to purchase, where the property is placed in the possession of the vendee, shall be absolute as to the purchasers, encumbrancers and subsequent creditors in good faith, unless within ten days after taking possession by the vendee, a memorandum of such sale, stating its terms and conditions and signed by the vendor and vendee, shall be filed in the auditor's office of the county, wherein, at the date of the vendee's taking possession of the property, the vendee resides. [Amendment, approved Feb. 10, 1903; L. 1903, p. 6.]

§ 4585. Conditional sales of personalty—Filing of.—Under Laws 1893, page 253 (Bal. Code, § 4585), providing that all conditional sales of personal property, where the property is placed in the possession of the vendee, shall be absolute as to all creditors or purchasers in good faith, unless within ten days of the taking possession a memorandum of the sale stating its conditions be filed for record, a purchaser of such property in consideration of a pre-existing debt is within the

class of persons protected by the statute: *Johnston v. Wood*, 19 Wash. 441, 53 Pac. 707.

The custom prevailing in the jewelry business, whereby goods sent by a wholesale dealer to a retail merchant under what is called a "memorandum" contract, remain the property of the wholesale dealer and are only to be paid for after sale by the retailer, who is entitled to retain his profits, and in case no sale is made, the goods are to be returned to the whole-

sale dealer, constitutes a conditional sale, and an innocent purchaser of such goods from the retailer comes within the protec-

tion of Ballinger's Code, section 4585: *Eisenberg v. Nichols*, 22 Wash. 70, 79 Am. St. Rep. 917, 60 Pac. 124.

§ 4586. Auditor to Index Contracts Filed.

It shall be the duty of the county auditor wherein any such memorandum is presented to him for that purpose, to file all such instruments, upon payment of proper fees therefor, indorse thereon the time of reception, the number thereof, and he shall enter in a suitable book to be provided by him at the expense of his county, with an alphabetical index thereto, and exclusively for that purpose, ruled into separate columns with appropriate heads, "The time of filing," "Name of vendor," "Name of vendee," "Date of instrument," "Amount of purchase price," and "Date of release." An index of said book shall be kept in the manner required for indexing deeds to real estate, and the county auditor shall receive for the services required by this act the sum of twenty-five cents for each instrument, and the money so collected shall be accounted for as other fees of his office. Such instrument shall remain on file for the inspection of the public until full payment has been made thereon, and shall be satisfied or canceled in the same manner and upon payment of same fees as chattel mortgages are satisfied or canceled. [Amendment, approved Feb. 10, 1903; L. 1903, p. 6.]

§ 4601. Wills—Void when children not provided for.—In an action by a minor within one year after arriving at the age of majority to vacate a judgment awarding all the property of plaintiff's deceased mother to her surviving husband, under a will which failed to mention the children of the testator, the complaint states a cause of action when it alleges that the will made no provision for any of the children, and that oral evidence was received by the trial court for the purpose of showing an intention to omit them, since the admission of such evidence to vary the will constituted error of the trial court: *Morrison v. Morrison*, 25 Wash. 467, 65 Pac. 779.

Under Ballinger's Code, section 4601 (1 Hill's Code, § 1465), providing that a deceased parent should be deemed to have died intestate as to any child not named or provided for in the will, a will providing for an illegitimate child, who had been recognized as a son, by other than his real name, satisfies the statute, when there was no other child, and it is evident that such son was in the mind of the testator: *In re Gorkow's Estate*, 20 Wash. 563, 56 Pac. 385.

§ 4608. Wills of land—How construed. Title to lands in this state devised by will vests in the devisee fully, after probate of the will, the title relating back to the death of the testator: *Christofferson v. Pfennig*, 16 Wash. 491, 48 Pac. 264.

Under Ballinger's Code, section 4608, a will must be construed as passing an absolute fee simple title to the devisee named, instead of a life estate, when the

will devises "the balance of my property, real and personal, to my cripple son, Charles. . . . In case of his death it is my desire that my sole property shall be applied to the school fund of Wilbur," since, in the absence of a clear intent to convey a less estate, it must be construed that the testator had reference to the possibility of the devisee's death before his own: *Reeves v. School District*, 24 Wash. 282, 64 Pac. 752.

Questions as to the construction of a will and as to the vesting of the property mentioned in it are not cognizable in a proceeding to have the will established in probate, the only question for consideration in such a proceeding being the validity of the will: *Montrose v. Byrne*, 24 Wash. 288, 64 Pac. 534.

§ 4614. Wills—Construction of.—A will and codicil must be construed together and the one general intent pervading both must be gathered. A declaration in a will, that the testator "desires \$15,000 to be given to our foster son, Edward Woods Hunt, at any time convenient to my executrix," constitutes neither a bequest nor a precatory trust, when the will provides that, with the exception of a single specific bequest, all the testator's property shall go to the wife, with the suggestion that she live upon the income thereof, but, in case that should not be sufficient for her support, she shall have "full privileges to use such of the principal as she may require, without any contests or objections from any other heir or heirs," and it appears that if said sum of \$15,000 should be allotted

to the foster son, there would be nothing for the bequest in favor of the wife to operate upon, and nothing for certain residuary legatees for which the will provides: *Hunt v. Hunt*, 18 Wash. 14, 50 Pac. 578.

Where a will is certain in its terms as to the property devised, the character of the devise, and the person of the devisee, extrinsic evidence is not admissible to change or add to its terms; and the mere fact that the testator failed to dispose of all of his realty by will would not create such an ambiguity as to warrant the introduction of parol testimony to show his intent to devise the omitted land to the person to whom the adjoining tract had been devised: *Taylor v. Horst*, 23 Wash. 446, 63 Pac. 231.

§ 4621. Descents and distributions of estates—Community property—Descent of—Rights of surviving spouse.—Under the established rule of law and of property in this state, upon the death of one spouse, leaving legitimate issue living, one-half of the community property descends to such issue and does not vest in the other spouse by right of survivorship: *Warburton v. White*, 18 Wash. 511, 52 Pac. 233, 532.

The purchase by the husband in his own name of real property with community funds, while Laws 1875, page 53, giving the surviving spouse the whole of the community property, and Laws 1873, page 450, giving the husband the management and disposition of community property, were in force, would not give the husband such vested right of survivorship in the realty, in its nature proprietary and contractual, as to be beyond the power of the legislature to impair by subsequent legislation: *Id.*

Section 2 of the act of 1875 (Laws 1875, p. 53), giving the surviving spouse a right of survivorship in community property cannot be held as conferring a vested right, since to that extent it would be unconstitutional as not being embraced in the title of the act, which was one "to regulate the descent of real estate and the distribution of personal property": *Id.*

Heirs of community.—A surrender of mortgaged community realty to the mortgagee by the father alone would not affect the title of the children in the share inherited by them from their mother, and could give the mortgagee no better title than that of a tenant in common with the children: *Vermont Loan & Trust Co. v. Cardin*, 19 Wash. 304, 53 Pac. 164.

§ 4624. Illegitimate child—Right of inheritance.—Where an illegitimate child has been recognized by his father in writing, he becomes as much the heir of his father, as a legitimate child, although his parents may never have intermarried, and, if the father die, leaving no widow, such

child is as much entitled as one born in wedlock to the possession of the homestead and to an allowance for support pending the settlement of the estate: *In re Gorkow's Estate*, 20 Wash. 563, 56 Pac. 385.

Under Ballinger's Code, section 4624, providing that every illegitimate child shall be considered as an heir to the person who shall, in writing, signed in the presence of competent witnesses, have acknowledged himself to be the father of such child, it is sufficient that the acknowledgment be made for a collateral purpose, other than the express intention on the part of the parent of admitting the illegitimate child to heirship: *In re Rohrer*, 22 Wash. 151, 60 Pac. 122.

§ 4640. Title vests without administration.—Where all the debts against a decedent's estate have been either satisfied or barred, and all expenses of administration paid, and the administrator and the heirs have agreed among themselves to abandon the probate proceedings, and the realty belonging to the estate has been distributed by agreement among the heirs according to their several interests, that portion of the estate must be presumed as having been fully administered, and an administrator de bonis non cannot subsequently take possession of the realty and proceed to administer thereon because of the failure of the former administrator to procure a decree of distribution through the proper court: *Griffin v. Warburton*, 23 Wash. 231, 62 Pac. 765.

Funeral expenses constitute a debt against a decedent, within the contemplation of Laws 1895, page 197: *In re Smith's Estate*, 25 Wash. 539, 66 Pac. 93.

Under Laws 1895, page 197, sections 1 and 3, the real estate of a decedent is charged with such debts only in case letters were issued within the period of limitation, and where more than six years have elapsed before the issuance of letters the real estate cannot be charged with said debts: *In re Smith's Estate*, 25 Wash. 539, 66 Pac. 93.

In the foreclosure of a mortgage given by an ancestor his heirs are indispensable parties, under the terms of Ballinger's Code, section 4640, which provides that the estate of the ancestor vests in the heirs instantly on his death, and that an heir may maintain an action, even if letters of administration have been granted, to recover his interest in the lands against any person except the executor or administrator, and those lawfully claiming under such executor or administrator: *Anrud v. Scandinavian Am. Bank*, 27 Wash. 16, 67 Pac. 364.

§ 4650. Courts—Supreme court—Jurisdiction—Limitation.—Where it is evident from the stipulated facts upon which a case was tried that the action, so far as

appellants are concerned, was one for damages for the eloignment and conversion of saw logs, in which the amount in controversy was less than \$200, the judgment in the action is not appealable, although the issues made by the pleadings might be construed as making the action an equitable one for the foreclosure of a lien: *Durand v. Simpson Logging Co.*, 21 Wash. 21, 56 Pac. 846.

Attorney's fees claimed and allowed in an action are costs incident to the case, and cannot be regarded as a part of the original amount in controversy: *Id.*

Where, subsequent to appeal, in an action for unlawful detainer and damages, the possession of the premises is surrendered, leaving but the question of damages in controversy, which amount is less than \$200, the supreme court cannot entertain jurisdiction: *Puyallup Light, H. & P. Co. v. Stevenson*, 21 Wash. 604, 59 Pac. 504.

The supreme court has jurisdiction on appeal of a proceeding by mandamus to compel the issuance of a warrant for salary to a city officer, although the amount in controversy may be less than \$200: *State ex rel. v. Daggett*, 28 Wash. 1, 68 Pac. 340.

The assignment of part of a claim for a pecuniary demand being a legal assignment, enforceable at law under the provisions of our code, no equitable feature is presented from the mere fact that an assignee attempts to enforce the assignment of a part of a claim, and hence the supreme court cannot take jurisdiction of an appeal in such a case, where the amount in controversy is less than \$200: *Barto v. Seattle etc. R. Co.*, 28 Wash. 179, 68 Pac. 442.

Where the pleadings in an action against a garnishee fail to show the amount claimed to be due from the garnishee to the principal debtor, and the amount cannot be in any way determined from the record, the findings of the trial court as to the amount of such indebtedness are controlling, and where the amount is thereby shown to be below \$200, an appeal will be dismissed, although the amount in controversy in the original action, to which the garnishment proceeding is auxiliary, may be in excess of \$200: *Schreiner v. Emel*, 26 Wash. 555, 67 Pac. 228.

Where the value of the property sought to be recovered is in excess of \$200, such fact determines the amount in controversy for the purpose of appellate jurisdiction, even as to an intervening claimant who establishes title to a portion of the property of less value than that sum: *Good-year Co. v. Schreiber*, 29 Wash. 94, 69 Pac. 648.

An action for breach of warranty against encumbrances upon real estate by reason of the lien of unpaid taxes there-

on at the time of conveyance, the complaint alleging the lien judgment thereon and sale of the property, redemption by the grantee and demand upon grantor for the amount, the answer being a general denial, does not raise any constitutional question as to the legality of a tax or validity of a statute; and where the amount involved in such action is less than \$200 no appeal will lie from the judgment: *Hansen v. Nilson*, 17 Wash. 606, 50 Pac. 511.

Prohibition—To superior court.—Prohibition will not lie to restrain the superior court in the exercise of its preventive jurisdiction for the protection of a de facto officer in the possession of his office under color of right from intrusion or molestation by one claiming the office de jure, since the findings and conclusions of the court as to the facts which constitute color of right and possession can only be reviewed on appeal: *State v. Superior Court of Snohomish County*, 17 Wash. 12, 61 Am. St. Rep. 893, 48 Pac. 741.

§ 4663. Courts, superior—Jurisdiction of.—The superior court has jurisdiction of an action instituted to enjoin the collection of an illegal and void tax, and the property owner is not confined to proceedings before the board of equalization or appeal therefrom: *Lewiston Co. v. Asotin Co.*, 24 Wash. 371, 64 Pac. 544.

The fact that the superior court has been restrained by a writ of prohibition issuing from the supreme court from interfering with the rights of parties in the subject matter of a certain action, as decreed by the supreme court on appeal, will not prevent the superior court from assuming jurisdiction of an action involving the same subject matter, when the action involves the rights of a person who was not a party or privy to the prior action: *State v. Moore*, 16 Wash. 350, 47 Pac. 757.

A change in the incumbency of the judgeship of the superior court would not affect the right of the successor to pass upon the vacation of a judgment rendered by his predecessor, as the action of the judge is that of the superior court. The action of the superior court in subsequently vacating a judgment upon a second motion therefor, based upon the same grounds and the same showing as were presented upon a prior motion to vacate which had been refused, will not be interfered with by the supreme court, when it appears that the action of the court in the first instance was an abuse of discretion: *State v. Superior Court*, 18 Wash. 227, 51 Pac. 365.

§ 4676. Courts—Judges pro tempore.—A judge pro tempore may be appointed upon the written stipulation of the parties to hear and determine whatever remains to be done in a case, even after ver-

dict, such as the determination of questions raised by motion for new trial, and the entry of judgment upon the verdict theretofore rendered: *Nelson v. Seattle Traction Co.*, 25 Wash. 60, 66 Pac. 61.

A judge pro tempore has power to set-

tle the statement of facts in a case, where he was the presiding judge at the time of its trial and has been duly appointed judge pro tempore after the expiration of his term, for the purpose of trying whatever remains to be done in the case: *Id.*

§ 4683. Justice Courts—Jurisdiction in Criminal Cases.

The jurisdiction of justices of the peace in criminal prosecutions shall be coextensive with their respective counties, and they shall have concurrent jurisdiction with the superior courts in all misdemeanors, but in no event shall they impose a fine to exceed one hundred dollars, or sentence a person to jail for a period longer than thirty-three days, and where the offense is one that is punishable by both a fine and imprisonment, the period of imprisonment at the rate of three dollars per day for each day of the sentence and the fine, shall not together exceed one hundred dollars but if any fine imposed is not paid with costs, then the person shall be imprisoned until such fine and costs are paid at the rate of three dollars per day for each day confined and the justices of the peace shall have jurisdiction over all criminal cases coming under any city or town ordinance. [Amendment, approved Feb. 28, 1901; L. 1901, p. 34.]

§ 4687. Venue of Actions in.

All actions commenced before a justice of the peace shall be brought in the justice court of the precinct in which one or more of the defendants reside. [Approved Mar. 7, 1899; L. 1899, p. 53.]

Justice code—Local jurisdiction.—The act of March 7, 1899 (Laws 1899, p. 53), must be construed as applying only to civil actions, since such construction harmonizes with the existing legislation on the subject of civil actions, and avoids any destruction of the uniformity governing trials under our system of criminal procedure; and, so construed, one chargeable with an offense cognizable by a justice of the peace, may, under the provisions of Ballinger's Code, section 4684, making a justice's territorial jurisdiction coextensive with his county, be prosecuted before any justice in the county: *State v. Schomber*, 23 Wash. 573, 63 Pac. 221.

§ 4697. Judicial officer—When disqualified.—Where an order made by a judge on the trial of a cause disposes of all the issues, his successor has jurisdiction to sign the necessary judgment to be entered therein, as such act is a purely formal matter not involving the exercise of any dis-

cretion and does not fall under the prohibition of Laws 1893, page 63 (Bal. Code, § 4697), which forbids a judge to act in a case "when he was not present and sitting as a member of the court at the hearing of a matter submitted for its decision": *Hazard v. McAndrews*, 18 Wash. 392, 51 Pac. 1064.

§ 4702. Judges—Jurisdiction of.—When a judge from another county is called in for the trial of a cause, such visiting judge is not required to return to the county where the trial was held, in order to settle and certify a statement of facts on appeal, but may perform such duty in any other county, under Ballinger's Code, section 4702, which provides that the judges of the supreme and superior courts have power, in any part of the state, to exercise and perform any duty conferred or imposed upon them by statute: *State ex rel. Malouf v. McDonald*, 21 Wash. 201, 57 Pac. 336.

§ 4702a. Powers of Superior Court Judges.

Any judge of the superior court of the state of Washington shall have power, in any county within his district: (1) To sign all necessary orders and papers in probate matters pending in any other county in his district; (2) to issue restraining orders, and to sign the necessary orders of continuance in actions or proceedings pending in any other county in his district; (3) to de-

cide and rule upon all motions, demurrers, issues of fact or other matters that may have been submitted to him in any other county. All such rulings and decisions shall be in writing and shall be filed immediately with the clerk of the proper county: Provided, That nothing herein contained shall authorize the judge to hear any matter outside of the county wherein the cause or proceeding is pending, except by consent of the parties.

Any judge of the superior court of the state of Washington who shall have heard any cause, either upon motion, demurrer, issue of fact, or other matter in any county out of his district, may decide, rule upon, and determine the same in any county in this state, which decision, ruling and determination shall be in writing and shall be filed immediately with the clerk of the county where such cause is pending.

An emergency exists and this act shall take effect immediately. [Approved Mar. 7, 1901; L. 1901, p. 76.]

§ 4729. Court commissioners, powers of. A court commissioner has power to try causes in which a jury is not required, and to enter judgment, which stands as the final judgment of the court, when no proceedings are instituted for its review by the court below, since the term "at chambers" must be construed in the light

of the practice prevailing at the date of the adoption of the constitution, and under the law then in force (Code 1881, § 2138), judges could at chambers try, hear, and determine all actions, causes, motions, demurrers, and other matters not requiring a trial by jury: *Peterson v. Dillon*, 27 Wash. 78, 67 Pac. 397.

§ 4735. Civil Procedure—Qualifications of Jurors.

A person is not competent to act as a juror unless he be—

1. An elector of the state of Washington.
2. A male inhabitant of the county in which he is returned and who has been an inhabitant thereof for the year next preceding the time he is drawn or called.
3. Over twenty-one years of age.
4. In possession of his natural faculties and of sound mind.
5. Able to read and write the English language.
6. A person who has been convicted of a felony is not competent to act as juror. [Amendment, approved Mar. 3, 1899; L. 1899, p. 35.]

§ 4740. Jurors—Manner of Drawing and Summoning—In Counties of First to Seventh Class.

Appointment of Commissioners.

The superior court for each county from the first to seventh classes, inclusive, shall upon the opening of court on the last Saturday in June of each year, by an order made in open court and entered of record, appoint as jury commissioners two electors of the county chosen by the court from four recommended by the bar of the county at a meeting of the bar called by the court for that purpose; the persons so appointed shall not be of the same political party; and such court shall cause the persons so appointed to appear and in open court take, and such court shall administer to them jointly an oath in the following form: "You do solemnly swear (or affirm) that you will, during your term of office, perform the duties of jury commissioners faithfully and to the best of

your ability; that in selecting persons to be drawn as jurors you will select none but persons whom you believe to be of good repute for intelligence and honesty; that you will select none that you have been or may be requested to select; and in all your selections you will endeavor to promote only the impartial administration of justice; so help you God."

§ 4740a. Term of Office.

The commissioners so appointed shall hold their office for the term of one year and until their successors are appointed and qualified. [Approved Mar. 16, 1901; L. 1901, p. 204.]

§ 4740b. Selection of Jurors.

In open court within twenty days in counties of the first class, and within ten days in counties of the second, third, fourth, fifth, sixth, seventh, eighth and ninth classes, the commissioners shall select the names of all the qualified jurors in the county as far as the commissioners may be able to ascertain the same from the latest tax rolls and poll books of the county and deposit the same written on separate slips of paper of uniform size, shape and color in a box to be furnished by the clerk of the court for that purpose. In selecting and depositing such names the said commissioners shall in all things observe their oath and they shall not select the names of any person who is to them known to be interested in any cause pending in the court by which such commissioners were appointed. When such names have been selected and deposited in such box the jury commissioners shall deliver the box, locked, and the key thereof, to the clerk of the court by which the commissioners were appointed; and such clerk shall at all times keep such locked box and said key separately in some safe and convenient place in his office. A list of the names so chosen shall be spread at large upon the journal of the court and all names subsequently drawn from the box shall at the time of the drawing be compared and checked in open court with the list as so recorded. [Amendment, approved Mar. 17, 1903; L. 1903, p. 359, § 1.]

§ 4740c. Order for, and Drawing of Juries from Box.

On the second Saturday in August and on the second Saturday in each calendar month thereafter except when the court may be in vacation, the superior court, on the opening of the court in the forenoon of such day, shall by an order made in open court and entered of record, direct to be drawn from such box such number of names as the judge of said court shall think requisite for the selection of petit jurors to serve during the ensuing calendar month, or shall think requisite for any grand jury which may have been or may be ordered for or during the ensuing three calendar months. Immediately upon the making of such order and before the transaction of any other business, the jury commissioners and the clerk of such court, or the deputy of such clerk, shall assemble in open court, and in the presence of such persons who may be or desire to be present, the clerk of such court or his deputy shall be blindfolded, and thereupon the box containing the names previously deposited therein by the jury commissioners, or such of such names as may yet remain in said box, shall be

first well shaken so that the names therein shall be thoroughly mixed and said clerk or his deputy, blindfolded as above provided, shall then draw from the box, one name at a time, the number of names previously ordered by such court; and the names so drawn shall be entered upon the journal of the court by the clerk, together with the certificate of the clerk of the drawing as above provided; and the names so drawn shall constitute the persons to be summoned to serve as petit jurors, or as grand jurors, as may be in accordance with the court's order previously made; and thereup [thereupon] the clerk shall issue a venire for summoning the said persons as petit jurors, or as grand jurors as the case may be. At the end of the month's service, unless sooner discharged by the court, all persons who have served as petit jurors during the month shall be discharged as jurors: Provided, That if at the time fixed for such discharge any of such persons shall be then serving upon the jury in such court in any cause the trial of which shall not then be concluded, or upon which such jury may then be deliberating, the persons upon such jury shall not be discharged until the conclusion of such trial or of the deliberation of such jury. [Amendment, approved June 13, 1901; L. 1901, p. 15; special or extraordinary session of 1901.]

§ 4740d. Order for, and Drawing of Extra Jurors' Names from Box.

Whenever the judge of such court shall be of opinion that by reason of numerous challenges in any cause, or for any other reason, there will or may not be sufficient persons drawn as in the last section provided, to constitute the necessary jury or juries for the trial of causes in such court during and before the time for the next drawing of jurors prescribed in section 4 of this act, such court may, by an order made and entered of record, direct the jury commissioners and the clerk of such court to appear in open court at a time fixed in such order for the purpose of drawing as many names from such box as the court may in said order prescribe; and thereupon at the time fixed in said order the said commissioners and the clerk, or the deputy of such clerk, shall in open court appear, and the number of names prescribed in said order shall, by said clerk or his deputy, in the manner prescribed in section four of this act be drawn from such box; and thereupon the clerk shall issue a special venire for the summoning of the persons so drawn to serve as jurors. If for any reason the names in such box shall be exhausted, or so nearly exhausted that the number of names prescribed in any order of such court made, as in this section or in section four of this act provided, cannot be drawn therefrom, the jury commissioners shall forthwith and in the manner provided in section 3 of this act select and deposit in said box the names of all the qualified jurors in the county, ascertained in the manner hereinbefore provided.

§ 4740e. Custody of Box.

The clerk of such court shall safely keep said box, and the same shall not be unlocked or opened except for the deposit or drawing of names as above required; and any person opening said box for any other purpose shall be deemed guilty of a contempt of court, and be punished summarily by the court by either fine or imprisonment or both in the discretion of the court.

§ 4740f. Interest of Commissioner not Cause of Challenge.

It shall not be a cause for challenge to any juror nor shall any juror be incompetent or excused for the reason that the name of such juror was selected and deposited in such box by a jury commissioner who was or is interested as a party or as an attorney or counsel or otherwise in any action pending in said court or which is to be or may be tried by or before any jury upon which such jury is called or chosen.

§ 4740g. Failure to Perform Duties—Punishment for.

Any person appointed a jury commissioner who shall, except for cause deemed sufficient by the court appointing him, fail to take upon himself said office or fail or refuse to discharge any of the duties thereof shall be deemed guilty of contempt of court, and shall be summarily punished by the court by fine or imprisonment, or both in the discretion of the court.

§ 4740h. Vacancies—How Filled.

Should a vacancy occur in the office of jury commissioner at any time, either by death, resignation or removal or for any cause the court shall fill such vacancy by appointment as in section 1 of this act provided; and the person so appointed shall serve during the unexpired term of his predecessor.

§ 4740i. Compensation of Commissioners.

For the time actually employed in the performance of his duties each jury commissioner shall receive five dollars per day; and each jury commissioner shall present to and file with the clerk of the court appointing him at least once in three months an itemized statement of the time employed together with his claim for compensation therefor at the rate aforesaid which bill shall be verified by the oath of such commissioner that the same is true and correct and has not been paid; and thereupon such bill or statement shall be presented to the judge of the court appointing such commissioner, either in open court or in chambers, and if said bill or statement appears to said judge to be correct he shall indorse thereon his approval signed by him as such judge, and thereupon the same shall be paid in the like manner as the fees of jurors are or may be paid.

§ 4740j. Open Venires—Issued When.

By stipulation or agreement between the parties to any action pending in such court, made in open court and entered upon the minutes of journal thereof, or made in writing and signed by such parties or by their attorneys of record and filed with the clerk of such court, and if such court shall consent to and approve of such agreement or stipulation, the court may at any time order an open venire or venires to be issued by the clerk of such court summoning persons to serve as petit jurors in said cause pending between said parties; or, upon such agreement or stipulation made as in this section provided, and approved by the court, the court may order the sheriff to summon from the by-standers a sufficient number of persons to fill up any petit jury then being selected in said cause between such parties: Provided, however, That persons selected upon any such open venire, or in such manner summoned from the bystanders shall be subject to challenge in the same manner and for the same causes as persons other-

wise selected for jurors and previous service on petit jury within the two years last preceding shall be a ground of such challenge.

§ 4740k. Absence of Commissioners Pro Tempore to be Appointed.

If at any of the times prescribed in this act, or fixed in any order of the court made pursuant to this act for the drawing from such box of the names of persons to serve as jurors, any jury commissioner shall be absent, the court shall immediately by order made and entered of record appoint some other person to serve as jury commissioner pro tempore in the place of such absent jury commissioner; and thereupon such jury commissioner pro tempore shall first take the oath and be sworn as in section 1 of this act provided, and shall then discharge the duties of the office during the absence of the jury commissioner; and such jury commissioner pro tempore shall be entitled to payment for his services at the same rate and in the same manner prescribed in this act for the payment of jury commissioners; and such absent jury commissioner shall not be entitled to payment for such time; and such court may at any time thereafter require such absent jury commissioner to give an excuse for his absence upon the penalty of being removed from his office for failure to excuse his absence.

§ 4740l. Removal of Commissioner.

The superior court appointing any jury commissioner may at any time for cause deemed by such court sufficient, remove any such jury commissioner from his office; but such court shall first by order require such jury to show cause why he should not be removed, and in such order set forth the alleged cause for which it is proposed to remove such jury commissioner, and shall first give such jury commissioner a hearing thereon in open court. If after such hearing the court shall think proper to remove such jury commissioner the court shall make and enter an order of record removing such commissioner, which order shall state the cause of such removal.

§ 4740m. Juries Drawn in Vacation—When.

When, pursuant to any statute of this state, there is elected but one judge of the superior court in and for two or more counties, the superior court of any such county may by an order made and entered of record that until such order be altered or revoked, the drawing from such box of the names of persons to serve as jurors in that court shall take place in the courtroom in such county and not in open court and without the presence of the judge; and while such order remains in force the drawing shall be made accordingly; but the names of the persons drawn shall nevertheless be entered upon the journal of such court, together with the clerk's certificate prescribed in section 4 of this act, and the judge of the superior court for any such county may, while he is within or without such county, make in writing and sign the order prescribed in said section 4 for drawing persons to serve as jurors; but he shall then forward such order to the clerk of such court in time to reach such clerk on or before 10 o'clock A. M. of the last Saturday in the current month; and such drawing shall then take place at said hour on said Saturday. If at the time when the said court judge would otherwise make said order, it appears to the judge of said court that no

jury will be needed in the ensuing month, the judge may omit said order and no jury need be drawn for such ensuing month. [Approved Mar. 16, 1901; L. 1901, p. 204.]

§ 4740n. Operation of Act Postponed.

All juries in any of the superior courts in this state in counties of the first seven classes, whether grand or petit, and whether in special proceedings or otherwise, shall be selected as in this act provided, except that until the second Saturday in August, 1901, jurors may be drawn under the provisions of the law in force prior to the going into effect of this act, and any jury serving on the second Saturday of August, 1901, may continue to serve until the first day of September, 1901, and if engaged in the trial or determination of any pending case, until the determination thereof. All acts or parts of acts inconsistent herewith are hereby repealed.

An emergency exists and this act shall take effect immediately. [Amendment, approved June 13, 1901; L. 1901, p. 17, § 2, extraordinary session of 1901.]

Jury, mode of selecting.—All the proceedings regulating the selection of jurors under Laws 1901, page 204, are a part of the general records of the superior court in each case tried by jury, and, by virtue of their nature and purpose, when properly certified by the clerk of the superior court, will be considered on appeal, independent of any bill of exceptions or statement of facts: *State v. Vance*, 29 Wash. 436, 70 Pac. 34.

The action of jury commissioners in selecting the names of only 960 out of 5,000 persons in the county qualified to act as jurors is not a ground for challenge to the panel, where the law requiring the jury commissioners to "select the names

of all the qualified jurors in the county, so far as they may be able to ascertain the same from the latest tax rolls and poll books," invests them with discretion to select none but persons whom they believe to be of good repute for intelligence and honesty, none that they have been requested to select, nor the name of any person known to be interested in any cause pending in court, and in all their selections to endeavor to promote only the impartial administration of justice; the presumption being, in the absence of evidence to the contrary, that public officers charged with the performance of official duty have duly performed the same in the proper manner: *Id.*

§ 4741. Drawing and Summoning Jurors—In Counties of Eighth to Twenty-ninth Class.

In counties of eighth to twenty-ninth class. In all counties from the eighth to the twenty-ninth class, inclusive, the board of county commissioners of each county shall draw from the persons qualified to act as jurors the names of three hundred persons, who shall be householders or freeholders, to serve as grand and petit jurors for the ensuing year, and the clerk of the board of county commissioners shall certify the same to the clerk of the superior court of said county: Provided, That if from any cause the county commissioners shall be unable to select the full number of names in this section provided for, they shall select such less number as they shall agree upon, and in such case the commissioners shall certify to the clerk the reasons why such less number has been selected: Provided, however, That for no cause shall a less number than one hundred names be selected. [Amendment, approved Feb. 28, 1901; L. 1901, p. 32.]

§ 4741. In counties of eighth to twenty-ninth class.—The fact that the county commissioners selected less than the names

jurors during a certain year, is not ground of challenge to the panel, under Code of Procedure, section 58, giving the right to select less, "if from any cause the county

commissioners are unable to select the full number," even though no showing is made in the certificate of the commissioners to the clerk of the superior court, setting forth the reason why such less number had been selected. A change in the law providing for the selection of a list of jurors is not ground of challenge to the panel of jurors selected under the former law, when it does not appear that any material interest of the defendant is affected thereby, and the new law especially provides that it is the intention of the act that the selection under the old law should remain intact, unless for some good reason the county commissioners see fit to set it aside and make a new selection: *State v. Straub*, 16 Wash. 112, 47 Pac.

§ 4742. **Jury—Judge may order panel, when.**—Where the regular panel has become exhausted before the completion of the jury, the court is authorized, under

Laws 1895, page 140, section 3, to order a second panel of jurors to be drawn and summoned from the regular jury list: *State v. Cushing*, 17 Wash. 544, 50 Pac. 512.

§ 4748. **Jurors—Exemption from service.**—Ballinger's Code, section 4748, which makes service upon a jury within the previous year a ground for challenge, does not render one incompetent to serve as a juror, in the absence of a challenge: *State v. Hall*, 24 Wash. 255, 64 Pac. 153.

§ 4755. **Prosecuting attorney—Appointment by court.**—The appointment by the court of special counsel to represent the state before the grand jury, while the prosecuting attorney stands ready and willing to perform his duties in that respect, will warrant the setting aside of any indictment found by the grand jury at the instance of such special counsel: *State v. Heaton*, 21 Wash. 59, 56 Pac. 843.

§ 4756. **Prosecuting Attorneys—Deputies.**

The prosecuting attorney of each county may appoint, by and with the consent of the county commissioners, one or more deputies who shall have the same power in all respects as their principal. Such appointment shall be in writing, signed by the prosecuting attorney and filed in the county auditor's office. Each deputy thus appointed shall have the same qualifications required of the prosecuting attorney, but his appointment may be revoked by the prosecuting attorney or county commissioners at will. The prosecuting attorney shall be responsible for the acts of his deputies.

An emergency exists and this act shall take effect immediately. [Amendments, approved Feb. 10, 1903; L. 1903, p. 7.]

§ 4759. **Attorneys—By Whom Admitted.**

No person shall be permitted to practice as an attorney or counsellor at law, or to commence, conduct or defend any action or proceeding in which he is not a party concerned, either by using or subscribing his own name, or the name of any other person, unless he has been previously admitted to the bar by order of the supreme court or of two judges thereof; and the court shall fix the times when examinations shall take place, which may be either in term or vacation, and shall prescribe and publish rules to govern such examination; and the court may appoint three attorneys at law, members of the bar of said court of not less than five years' standing, as a board of examiners to conduct written examinations of applicants for admission to the bar, under the direction of said court, the members of which said board shall hold office for one year from and after their appointment, unless sooner removed by the court. The members of said board of examiners shall be allowed and paid a per diem not to exceed ten dollars per day during their attendance upon said court in the conduct of said examinations, and mileage at the rate of five cents per mile for every mile actually traveled going to and returning from attendance upon the court at such examination; but this section shall not be applied to persons admitted under pre-existing laws: Provided, That graduates of the law department of the university of Washington af-

ter a full course of two years' study shall be admitted without examination upon the production of their diplomas of graduation and evidence to the satisfaction of the court that they are citizens of the United States, are of full legal age, and are of good moral character.

Duties of Applicant.

All persons making application for admission to the bar as herein provided, shall file a notice of such application with the clerk of the supreme court at least one week before the date of such examination, as shall be fixed by rule of the supreme court, and shall pay to such clerk the sum of \$20, in full for all fees, for filing his application, entering his admission and the issuing of a certificate therefor, and the fees so paid to the clerk shall be accounted for by the clerk of said court as other fees: Provided, That no fee shall be required to be paid by graduates of the law department of the state university of Washington.

An emergency exists, and this act shall take effect immediately. [Amendment, approved Mar. 20, 1903; L. 1903, p. 391, § 1.]

§ 4763. Disqualification.—Under Laws 1895, page 178, section 6, which provides that no person shall practice law in the state who is not a citizen of the United States, a Japanese is not entitled to admission to practice, since he is ineligible to citizenship: *In re Yamishita*, 30 Wash. 234, 70 Pac. 482.

§ 4767. Appearance without authority. Where the question of the authority of an attorney to appear for a party has been raised and passed upon in the original action, it cannot be retired upon a petition to vacate the judgment therein, although Ballinger's Code, section 4767, provides that the court may at any stage of the proceedings relieve the party, for whom an unauthorized attorney has assumed to appear, from the consequences of his acts: *Roberts v. Railway Co.*, 21 Wash. 428, 58 Pac. 576.

§ 4769. Change of.—Under Ballinger's Code, section 4769, which permits a change of attorneys in an action, upon the order of the court, in an application therefor by the client, but requires the charges of such attorney to be paid before any change can be made, the conclusion of law by the court that the client may discharge the attorney upon payment to him of \$300 attorney's fees, and moneys advanced by him as costs, is warranted, where the findings of fact show that there was no contract between them as to the amount of compensation to be paid, that \$300 was a reasonable compensation for the services rendered, and that certain sums had been expended by the attorney in behalf of his client as advanced costs: *Payette v. Willis*, 23 Wash. 300, 63 Pac. 254.

Under Ballinger's Code, section 4769, authorizing a change of attorneys at any

time before the final determination of an action, upon the order of the court on the application of the client therefor, a notice issued by citation is sufficient, provided the attorney is thereby given reasonable notice of the application for a change: *Schultheis v. Nash*, 27 Wash. 250, 67 Pac. 707.

In an application for the substitution of attorneys, which Ballinger's Code, section 4769, authorizes, provided the charges of the attorney have been paid by the party asking the change to be made, the refusal of the court to admit in evidence a contract between the attorney and client for his fees, and its action in governing the admission of evidence as to the value of his services by the rule of quantum meruit, was erroneous: *Id.*

§ 4772. Attorney—Liens on papers, etc. Under Ballinger's Code, section 4772, which provides that an attorney has a lien for his compensation upon the papers of his client, which no right of action is given the attorney to enforce such lien, but he is merely entitled to retain such papers until paid, and where he parts with possession, even that right is waived and relinquished: *Gottstein v. Harrington*, 25 Wash. 508, 65 Pac. 753.

§ 4793. Only one form of action.—Under the statute of this state (Bal. Code, § 4793), abolishing forms of actions, the common-law rule relating to the abatement of actions on the death of a party is applicable to suits of equitable cognizance: *Overlock v. Shinn*, 28 Wash. 206, 68 Pac. 436.

It was error for the court to dismiss an action for damages for forcible and wrongful eviction from leased premises on the ground of the invalidity of the lease

in law for lack of acknowledgment, when in fact the lease was enforceable in equity as a valid contract by reason of part performance thereunder: *Browdwe v. Phinney*, 30 Wash. 74, 70 Pac. 264.

§ 4726. **Limitations**—When begins to run.—Where moneys arising from sheriff's commissions wrongfully charged on foreclosure sales have been paid by him into the county treasury, the statute of limitations begins to run against actions to enforce repayment from the dates such moneys were turned into the treasury and not from the date of demand therefor on the county, although action would not lie against the county until after demand for repayment: *Spinning v. Pierce County*, 20 Wash. 126, 54 Pac. 1006.

Where subscriptions to aid in the construction of a railway were made to trustees on condition that promissory notes or deeds to real estate should be executed and delivered to the trustees whenever any company should be secured to construct the railway, and should be placed in the hands of the trustees with the understanding that one-half of the total should be paid over by the trustees when the railway was graded and the ties and iron laid, and the balance should be delivered when the first train was run over the entire line, a right of action on such subscription accrued upon the completion of the railway and the operation of trains thereon; and where the subscriber had an option to pay in money or real estate, his election was necessary as soon after performance of the conditions of the contract as he had notice thereof, and the statute would begin running from the date: *McClaine v. Fairchild*, 23 Wash. 759, 63 Pac. 517.

The absence of a mortgagor from the state will not suspend the running of the statute of limitations as to the mortgage executed by him, where he has parted with all his interest in the premises to a subsequent grantee, who has resided in the state continuously and against whom the remedy of foreclosure has been at all times available during the running of the statute: *George v. Butler*, 26 Wash. 456, 90 Am. St. Rep. 756, 67 Pac. 263.

The fact that a mortgage is given to secure several promissory notes, which mature at varying dates, would not postpone the running of the statute of limitations to the accrual of right of action upon the note last maturing, since the mortgage is a mere incident to the notes, and the right of action upon each note accrues as fast as it matures, and thereupon starts the running of the statute as to such note: *Id.*

A subsequent grantee of mortgaged premises, who has neglected to put his deed of record until after the bringing of action against the mortgagor for foreclosure, is estopped from setting up the

bar of the statute of limitations, where the mortgagee had no notice, actual or constructive, of the conveyance, and had postponed suit because of the absence of the mortgagor from the state, during which period the bar of the statute had been suspended as to such mortgagor: *Denny v. Palmer*, 26 Wash. 469, 90 Am. St. Rep. 766, 67 Pac. 268.

Under an ordinance providing for the return of money paid for delinquent tax certificates, by the purchaser, with interest thereon, in case of their having been erroneously issued, and requiring the city comptroller, "when such error is discovered," to cause notice to be given to the purchaser, calling such certificate for cancellation, the statute of limitations does not begin to run against the purchaser's right of action for recovery under the ordinance, until discovery of the irregularity and notice thereof to the purchaser: *Gove v. Tacoma*, 26 Wash. 474, 67 Pac. 261.

Where one rightfully in the possession of another's goods wrongfully pledged them to a third party, who afterward sold them in satisfaction of the pledge, the limitation upon the owner's right of action against the pledgee for conversion began to run from the time of the pledgee's acquisition of the goods and not from the time of sale: *Kinhead v. Holmes & Bull Furniture Co.*, 24 Wash. 216, 64 Pac. 157.

The statute of limitations will not begin to run against an action for breach of covenants of warranty of title and for quiet enjoyment, until the eviction of the grantee: *West Coast Imp. Co. v. West Coast Mfg. Co.*, 25 Wash. 628, 66 Pac. 97.

The right of action upon a judgment in this state begins to run from the date of its rendition: *Bank v. Lucas*, 26 Wash. 417, 90 Am. St. Rep. 748, 67 Pac. 252.

In an action for the foreclosure of a mortgage, where the debt had been merged in a personal judgment on the notes secured by the mortgage, the running of the statute of limitations would not commence with the date of such judgment, but at the date of the maturity of the original debt as described in the mortgage: *Hanna v. Kasson*, 26 Wash. 568, 67 Pac. 271.

The fact that a smelter would inevitably occasion the damage for which plaintiff sues would not start the running of the statute of limitations from the first operation of the smelter, but the right of action would accrue only at the time the fumes began to cause damage: *Sterrett v. Mining etc. Co.*, 30 Wash. 164, 70 Pac. 266.

The operation of a smelter, although a lawful business, is one which is sure to destroy vegetation upon which the fumes and smoke therefrom may be precipitated, and

hence constitutes a continuing nuisance for which damages are recoverable for any period within two years prior to the commencement of action: *Id.*

The right of partnership creditors to enforce their claims against surviving partners being postponed under the provisions of Ballinger's Code, sections 6189, 6190, until after the settlement of the deceased partner's estate, the running of the statute of limitations against such claims would be suspended during such period: *Brigham-Hopkins Co. v. Gross*, 30 Wash. 277, 70 Pac. 480.

Where services are rendered under a contract for an indefinite time, with no period of payment specified, the employment is a continuous one and the statute of limitations will not begin to run against an action to recover compensation until the services are ended: *Morrissey v. Fancett*, 28 Wash. 52, 68 Pac. 352.

Where a nunc pro tunc order modifying a judgment in the supreme court against sureties upon an appeal bond was made as of the date of the judgment on the bond originally rendered, the period of limitation for purposes of revival of such judgment, as permitted by Code of Procedure, section 463, begins to run from the date of rendition of the judgment and not from the date of its modification: *Sears v. Kilbourn*, 28 Wash. 194, 68 Pac. 450.

A stipulation in a mortgage that upon default in the payment of interest the right of foreclosure should immediately accrue would not set the statute of limitations running from the date of such default, where the default had not been claimed by the mortgagee: *First Nat. Bank v. Parker*, 28 Wash. 234, 92 Am. St. Rep. 828, 68 Pac. 756.

The statute of limitations will not begin to run against rights of action arising out of the contracts of a town illegally incorporated, until the subsequent validation of the incorporation and of its contracts theretofore made: *State ex rel. Hemen v. City of Ballard*, 16 Wash. 419, 47 Pac. 970.

The statute of limitations does not begin to run against a city warrant until there is money in the treasury applicable to its payment and until the holder of the warrant had such notice as would enable him to present it to the treasurer for payment: *Potter v. Whatcom*, 20 Wash. 589, 72 Am. St. Rep. 135, 56 Pac. 394.

The bar of the statute of limitations does not begin to run against an action for the reformation of a deed until the assertion of an adverse claim against the party seeking reformation: *State v. Lorenz*, 22 Wash. 289, 60 Pac. 644.

A mortgagor cannot, by means of a partial payment after the bar of the statute of limitations has become complete, revive the mortgage as against an-

other party who had purchased the lands but was not obligated to pay the debt: *Damon v. Leque*, 17 Wash. 573, 61 Am. St. Rep. 927, 50 Pac. 455.

Partial payment by a mortgagor on his mortgage indebtedness will not extend the statute of limitations as against a judgment creditor of the mortgagor who has bought in the mortgaged premises under execution sale and thereby become vested with such an interest in the land as to deprive the mortgagor of the right by any act or stipulation to extend the limitation upon the mortgagee's right of foreclosure, even though the mortgagor at the time of such partial payment may have had the right of redemption against the execution sale: *Raymond v. Bales*, 26 Wash. 494, 67 Pac. 269.

When and how defense must be presented.—The defense that the statute of limitations has run against plaintiff's cause of action cannot be raised on appeal, when not raised in the court below by demurrer or answer: *Herrich v. Nieszc*, 16 Wash. 74, 47 Pac. 414.

The defense of the statute of limitations is properly raised by answer, instead of by demurrer, when the defect does not clearly appear on the face of the complaint: *Damon v. Leque*, 17 Wash. 573, 61 Am. St. Rep. 927, 50 Pac. 485.

Where a mortgage has been foreclosed without including certain parties claiming an interest in the premises, and a subsequent suit is brought against the omitted parties to foreclose their interest, the fact that the claim secured by mortgage had been merged in the judgment in the original foreclosure proceeding would not deprive them of the right to plead the statute of limitations against the claim: *Raymond v. Bales*, 26 Wash. 494, 67 Pac. 269.

A demurrer to a complaint on the ground that it does not state facts sufficient to constitute a cause of action will not permit the objection to be urged that the action is barred, as that question should be raised by demurrer on the ground that the action was not commenced within the time limited by law: *Board v. First Presbyterian Church*, 19 Wash. 455, 53 Pac. 671.

A personal privilege.—The defense of the statute of limitations is a personal privilege, and can be pleaded only by the person directly entitled to the benefit of it: *Board v. First Pres. Church*, 19 Wash. 455, 53 Pac. 671.

§ 4797. **Real actions.**—One who squats upon land which is in litigation between other parties, erects a shanty thereon, intending it for temporary use as a residence, but continues his residence there for more than ten years, does not thereby acquire such a title by adverse possession as to bar an action for its recovery by the

true owner: *Blake v. Shriver*, 27 Wash. 593, 68 Pac. 330.

Where a homestead entry was made upon land through which the Northern Pacific Railroad Company was entitled to a right of way four hundred feet in width by the act of Congress of 1864, the land inclosed and cultivated by the entryman, and the inclosure forcibly broken by the railroad company for the construction of its line of railway, the attitude of the parties was hostile from the inception of the right, and the occupation and cultivation thereafter by the entryman of such portions of the right of way as were not in actual use by the railway would constitute adverse possession: *Northern Pac. Ry. Co. v. Hasse*, 28 Wash. 353, 92 Am. St. Rep. 840, 68 Pac. 882.

§ 4798. Six years—Judgments.—Where the entry of a deficiency judgment was made within six years of action thereon, it is not barred (conceding the six years' limitation is applicable to domestic judgments), although judgment of foreclosure upon which the deficiency judgment was based may have been entered more than six years prior to the commencement of action upon the deficiency judgment: *Big-nold v. Carr*, 24 Wash. 413, 64 Pac. 519.

Ballinger's Code, section 4798, which fixes a limitation of six years upon the commencement of "an action upon a judgment or decree of any court of the United States or of any state or territory within the United States," is applicable to domestic, as well as to foreign, judgments: *Bank v. Lucas*, 26 Wash. 417, 90 Am. St. Rep. 748, 67 Pac. 252.

Actions on domestic judgments fall within the provision of Ballinger's Code, section 4798, which limits actions on judgments of any state or territory to a period of six years after the accrual of a cause of action: *Shepherd v. Gove*, 26 Wash. 452, 67 Pac. 256.

Where a surety upon a bond pays a judgment against the principal debtor and himself, an action by him against his principal to recover the amount of the judgment cannot be maintained after the expiration of six years from the date of its entry, since the judgment creditor would be barred, and the surety would have no greater rights by subrogation than the judgment creditor had: *Cathcart v. Bryant*, 28 Wash. 31, 68 Pac. 171.

Actions for rent—Installments.—In an action to recover rent, the complaint is not demurrable because the statute of limitations has run against a portion of the rent due, where there is a balance due which is not barred: *Mounts v. Gorenson*, 29 Wash. 262, 69 Pac. 740.

§ 4800. Three years—Breach of official bond.—Where the duties of a public officer are prescribed by statute, and to secure their proper performance an official

bond is given by him, such bond creates no obligation in itself, but merely operates as collateral security for the proper discharge of his official duties; and an action on the bond on account of a breach of official duty would not be an action on a written contract, and would, consequently, be barred under the statutory limitation of three years upon the commencement of actions "upon a contract or liability, express or implied, which is not in writing, and does not arise out of any written instrument": *Spokane County v. Prescott*, 19 Wash. 418, 67 Am. St. Rep. 733, 53 Pac. 661.

A bond given by a guardian conditioned to account for the proceeds of sale of his ward's real estate, under Ballinger's Code, section 6427, prescribing the statutory duties of guardians of insane persons, is not an obligation in itself, but merely operates as collateral security for the proper discharge of the duties imposed on him by statute; and an action for the breach of such duties would be governed by the statute of limitations barring the commencement of actions "upon a contract or liability, express or implied, which is not in writing, and does not arise out of any written instrument": *Dickman v. Strobach*, 26 Wash. 558, 67 Pac. 224.

Misappropriation.—A complaint which alleges the misappropriation by a city of the moneys of a special fund at a date more than three years prior to the commencement of the action is demurrable on the ground that it had not been instituted within the time limited by law: *Quaker City Nat. Bank v. Tacoma*, 27 Wash. 259, 67 Pac. 710.

Fraud—Discovery of.—After a ward becomes of age she stands in the relation of a creditor of her guardian, and where she has knowledge after majority sufficient to put her on inquiry as to whether her guardian has appropriated a portion of her property, her right of action against him for fraud would accrue from the date of such knowledge, and, under Code of Procedure, section 115, would be barred if not prosecuted within three years thereafter: *Wickham v. Sprague*, 18 Wash. 466, 51 Pac. 1055.

An action by a principal against an agent to recover a sum of money, with interest, which the agent had obtained in violation of his trust, had concealed the fact from his principal, refused to pay the money over on demand after discovery, and fraudulently converted it to his own use, is an action for relief on the ground of fraud within the meaning of the statute of limitations, so that an action would not be deemed as having accrued until the discovery by the aggrieved party of the facts constituting the fraud: *Stearns v. Hochbrunn*, 24 Wash. 206, 64 Pac. 165.

An action against a trustee for relief

on the ground of fraud is proof against demurrer setting up the bar of the statute of limitations, when the complaint contains a direct statement of the time of the discovery of the fraud within the statutory period for action thereon, without negating the idea that it might have been sooner discovered: *Irwin v. Holbrook*, 26 Wash. 90, 66 Pac. 116.

An action for the vacation of a judgment, based upon fraud practiced by the prevailing party, when not brought within one year after rendition, as required by Ballinger's Code, sections 5153, 5156, may be maintained by suit in equity, where not discovered until the expiration of the right to resort to the statutory remedy, in which case the action is barred, if not brought within three years after discovery, under Ballinger's Code, section 4800, which provides that an action for relief upon the ground of fraud must be brought within three years, but the cause of action shall not be deemed to have accrued until the discovery by the aggrieved party of the facts constituting

the fraud: *Peyton v. Peyton*, 28 Wash. 278, 68 Pac. 757.

§ 4805. **Actions not specifically named.** A right of action for damages on account of removal of lateral support accrues, not at the date of the act of removal, but at the time that injury actually results therefrom, and it is only from the latter date that the statute of limitations begins to run: *Smith v. Seattle*, 18 Wash. 484, 51 Pac. 1057.

§ 4806. **Open accounts.**—Where the several items of an account have been furnished under an agreement that payment would be made therefor whenever the earnings from the operation of a line of railway would permit, the different items composing the account would constitute a single legal demand, and a partial payment applied thereon within the period limited by statute for the commencement of action thereon would operate to extend the bar of the statute from the date of such payment as to the whole account: *Bellingham Bay Imp. Co. v. Fairhaven etc. Co.*, 17 Wash. 371, 49 Pac. 514.

§ 4807. **Actions in Name of State.**

The limitations prescribed in this act (chapter) shall apply to actions brought in the name or for the benefit of any county or other municipality or quasi municipality of the state, in the same manner as to actions brought by private parties: Provided, That there shall be no limitation to actions brought in the name or for the benefit of the state, and no claim of right predicated upon the lapse of time shall ever be asserted against the state: And further provided, That no previously existing statute of limitation shall be interposed as a defense to any action brought in the name of or for the benefit of the state, although such statute may have run and become fully operative as a defense prior to the adoption of this act, nor shall any cause of action against the state be predicated upon such a statute. An action shall be deemed commenced when the complaint is filed.

An emergency exists and this act shall take effect immediately. [Amendment, approved Feb. 27, 1903; L. 1903, p. 26.]

§ 4807. **When action begun.**—The service of summons and copy of the complaint before the bar of the statute of limitations intervenes, and the filing of the complaint subsequent to the initiation of the bar, is not the commencement of action sufficient to stop the running of the statute of limitations, within the meaning of Ballinger's Code, section 4807, which provides that, so far as the statute of limitations is concerned, an action shall be deemed commenced when the complaint is filed: *Sresswell v. Spokane County*, 30 Wash. 620, 71 Pac. 195.

Under Ballinger's Code, section 4807, which provides that the limitations prescribed for the commencement of actions

"shall apply to actions brought in the name of the state, or any county or other public corporation therein, or for its benefit, in the same manner as to actions by private parties," title by adverse possession may be acquired under the statute of limitations as against a railroad right of way, although granted by act of Congress: *Northern Pac. R. R. Co. v. Hasse*, 28 Wash. 353, 92 Am. St. Rep. 840, 68 Pac. 882.

§ 4808. **Suspension by absence from state.**—The running of the statute of limitations is suspended during such time as plaintiff is incapacitated from bringing his action by reason of the absence of the defendant from the state: *Bignola v. Carr*, 24 Wash. 413, 64 Pac. 519.

Under Ballinger's Code, section 4808, which suspends the running of the statute of limitations during defendant's absence from the state, where an allegation of non-residence of the defendants is denied in the answer and an affirmative defense set up that defendant was a resident during all the time from the incurring of liability up to the commencement of the action, an issue of fact is raised by such answer, and the sustaining of a demurrer thereto is erroneous: *Meek v. White*, 26 Wash. 491, 67 Pac. 256.

§ 4816. New promise.—Under the rule that in order to revive a debt barred by the statute of limitations the promise to pay it must be certain, definite, unequivocal, and unconditional, a letter by the debtor to the creditor stating that, "That little amount that I owe you will be paid some time. I don't know just how much it is. You say \$1,000, but I never could figure that much. I always thought that little Harry paid that debt, but as he did not settle it I'll see into it some time," is not an acknowledgment or promise sufficient to avoid the bar of the statute: *Liberman v. Gurensky*, 27 Wash. 410, 67 Pac. 998.

Under Ballinger's Code, section 4816, which provides that no acknowledgment or new promise shall be sufficient to suspend the statute unless it be contained in some writing signed by the party to be charged thereby, the signing of the debtor's name by another under his direction is a sufficient compliance with the statute: *Id.*

§ 4817. Partial payments.—An indorsement of partial payment made by the payee upon the back of a promissory note after the bar of the statute of limitations was complete, is inadmissible in evidence, unless it is shown by other evidence that such payment had actually been made or that the payor had assented to the indorsement. An entry by a creditor, upon his own books, of an alleged payment of an account by a debtor, is not admissible, in a suit against the debtor, to remove the bar of the statute of limitations: *Schlotfeldt v. Bull*, 18 Wash. 65, 50 Pac. 590.

Where the bar of the statute of limitations has been pleaded against an action on account, the burden of relieving the account of the bar by proof of partial payment within the period of limitation, is upon the plaintiff, and, in case of denial of part payment by defendant, can be established only by clear and convincing testimony: *Gibson v. Kerry*, 19 Wash. 159, 52 Pac. 1023.

Where a note secured by a mortgage of community realty has been executed by a man and wife, payments of principal or interest thereon made by the husband without the authority of the wife after maturity will not extend the time of the running of the statute of limitations as

against her: *Stubblefield v. McAuliff*, 20 Wash. 442, 55 Pac. 637.

An action against the surety upon a promissory note is barred by the lapse of six years after its maturity, where no payments have been made by the surety, and he has not ratified any payments by his principal: *Bassett v. Thrall*, 21 Wash. 231, 57 Pac. 806.

Where mortgaged premises have been conveyed to a subsequent grantee, payments made by the mortgagor on the mortgage indebtedness will not extend the running of the statute of limitations as against such subsequent grantee without his consent: *Hanna v. Kasson*, 26 Wash. 568, 67 Pac. 271.

Payments made by one obligor will not extend the statute of limitations as against a co-obligor who has not consented thereto: *Id.*

Where the limitation upon the commencement of action on a promissory note has been extended by reason of a partial payment thereon, the statute begins to run from the day following the date of such partial payment: *Perkins v. Jennings*, 27 Wash. 145, 67 Pac. 590.

The statutes of limitation requiring action to be brought within a stated period from the time the cause of action accrued must be construed in connection with Ballinger's Code, section 4817: *Id.*

When part payment upon a promissory note was made by one of two co-obligors, thereby extending the period of limitation as to him, the complaint in an action against both, brought more than six years after the maturity of the note, is demurrable as to the obligor who did not join in the payment, when the complaint does not allege that such obligor authorized the payment and participated therein as his own act: *Id.*

§ 4818. Actions arising in and barred by laws of another state.—Is inapplicable in the case of an action upon a promissory note by a resident of this state against a nonresident, although at the time of the execution of the note both plaintiff and defendant were nonresidents, where plaintiff had taken up his residence within this state prior to the maturity of the note: *Freundt v. Hahn*, 24 Wash. 8, 85 Am. St. Rep. 939, 63 Pac. 1107.

§ 4824. Parties—Real party in interest. Where the notes and securities of one bank have been assigned to another bank in trust to secure the latter for advances made, the trustee bank may, under Code of Procedure, section 134, maintain an action upon a renewal note made payable to the assignor bank: *Seattle Nat. Bank v. Emmons*, 16 Wash. 585, 48 Pac. 262.

The fact that an action to restrain the issuance of a warrant upon a claim against a county had been instituted by the prosecuting attorney in his own name instead

of that of the county would not affect the validity of the judgment in the action: *State v. Headlee*, 18 Wash. 220, 51 Pac. 369.

Under Ballinger's Code, section 5527, which provides that a tenant of real property is guilty of unlawful detainer, when he holds over or continues in possession after the expiration of the term for which it is let to him, and that notice for the payment of rent or the surrender of the detained premises may be given in behalf of the person entitled to the rent upon the person owing the same; and under Ballinger's Code, section 4824, which provides that every action shall be prosecuted in the name of the real party in interest, except as is otherwise provided by law, an action of unlawful detainer may be maintained by a successor in interest of the estate of the landlord: *Capital Brewing Co. v. Crosbie*, 22 Wash. 270, 60 Pac. 652.

§ 4825. Parties in interest—Trustee of express trust.—In the listing of shares of capital stock in a banking corporation and in the payment of taxes thereon, the bank is constituted by law a trustee in behalf of the shareholders, and hence, under Ballinger's Code, section 4825, which provides that a trustee of an express trust may sue without joining the person for whose benefit the suit is prosecuted, the bank may maintain an action in its own name for the purpose of securing relief against excessive taxation of its capital stock: *National Bank v. Columbia County*, 23 Wash. 441, 63 Pac. 209.

In an action on a bond given to the United States by a contractor upon a public building for the protection of laborers and materialmen, under the provisions of the act of Congress of August 13, 1894, which provides that persons having a right of action for unpaid labor and materials may bring suit on such bond in the name of the United States for their use and benefit, the United States is a proper party plaintiff in the courts of the state, under Ballinger's Code, section 4825, which provides that "a trustee of an express trust may sue without joining the person for whose benefit the suit is prosecuted," the statute further declaring that such trustee "shall be construed to include a person with whom or in whose name a contract is made for the benefit of another": *United States v. Rundle*, 27 Wash. 7, 67 Pac. 395.

§ 4826. Husband and wife.—Under Ballinger's Code, section 4826, which provides that when the action concerns the wife's right or claim to the homestead

property, she may sue alone, a wife may maintain an action in her own name to restrain the sale of the community realty in which she and her husband claim the right of homestead: *Ross v. Howard*, 25 Wash. 2, 64 Pac. 794.

§§ 4828, 4829. Damages by causing death of another by negligence.—Under Code of Procedure, section 138 (Bal. Code, § 4828), giving a right of action to heirs of any person whose death is caused by the wrongful act or neglect of another, the term "heirs" must be restricted to the widow and children of deceased, and does not include parents or collateral relatives, in view of the facts that another provision of the same section confines the right of recovery to "the widow or widow and her children, or child or children, if no widow"; that Code of Procedure, section 139 (Bal. Code, § 4829), gives a right of action to parents or guardian for death of a minor child or ward; and that Code of Procedure, section 148 (Bal. Code, § 4838), provides that no action for personal injury occasioning death shall abate, but the right of action shall survive in favor of the wife and children: *Noble v. Seattle*, 19 Wash. 133, 52 Pac. 1013.

Under Ballinger's Code, sections 4800 and 4828, the widow and minor children of one whose death is caused by the wrongful act of another have a right of action therefor which may be commenced at any time within three years from the injury: *Robinson v. Baltimore etc. R. Co.*, 26 Wash. 484, 67 Pac. 274.

The mother is entitled to maintain such action, where the parents had been divorced and the deceased child had been awarded the husband, who had returned him to the mother after a period of two weeks with a promise to support him, but wholly neglected to contribute thereto, and had disappeared, casting the duty of support and education upon the child's mother: *Clark v. Northern Pac. Ry.*, 29 Wash. 139, 69 Pac. 636.

§ 4832. Guardian ad litem—Who may be.—Where a nonresident parent and minor children submit themselves to the jurisdiction of this state by instituting a joint action in one of its courts, it is not error for the court to appoint the parent as guardian ad litem for such minors, since Ballinger's Code, section 4832, provides that when an infant is a party, if he has no guardian, the court shall appoint one to act, and there is no provision requiring a guardian ad litem to be a resident of the state: *Shannon v. Mining Co.*, 24 Wash. 120, 64 Pac. 169.

§ 4832a. Insane, Appointment of Guardian ad Litem.

When an insane person is a party to an action in the superior courts he shall appear by guardian, or if he has no guardian, or in the opinion of the court the

guardian is an improper person, the court shall appoint one to act as guardian ad litem. Said guardian shall be appointed as follows:

1. When the insane person is plaintiff, upon the application of a relative or friend of the insane person.

2. When the insane person is defendant, upon the application of a relative or friend of such insane person, such application shall be made within thirty days after the service of summons if served in the state of Washington, and if served out of the state or service is made by publication, then such application shall be made within sixty days after the first publication of summons or within sixty days after the service out of the state. If no such application be made within the time above limited, application may be made by any party to the action. (Approved Mar. 13, 1899; L. 1899, p. 144.)

§ 4833. Who must be made.—In an action to set aside foreclosure proceedings, a grantee of the purchaser at a void foreclosure sale is a necessary party: *Smithson Land Co. v. Brautigan*, 16 Wash. 174, 47 Pac. 434.

Plaintiffs—Owners of separate parcels cannot join as, in action to quiet title.—An action to remove a cloud upon the titles of plaintiffs to their respective pieces of land, caused by a mortgage upon the whole of said land held by certain of the defendants, and also to restrain defendants from fencing up certain alleged public streets and alleys, cannot be maintained jointly by parties claiming under separate and distinct contracts and deeds embracing separate and distinct parcels of land purchased at different dates and in different additions, some of which had been laid out subsequent to the sales of lots in the prior platted additions: *Utterback v. Meeker*, 16 Wash. 185, 47 Pac. 428.

A contract liability of a partnership, incurred prior to the appointment of a receiver of the firm's business and property, cannot be enforced by action against the receiver alone: *Flynn v. Furth*, 25 Wash. 105, 64 Pac. 904.

Defendant.—Judgment creditor claiming priority of lien over that of mortgagee for purchase money is a proper party defendant: *Bisbee v. Carey*, 17 Wash. 224, 49 Pac. 220.

§ 4836. Actions against person severally liable.—Under Ballinger's Code, section 4836, providing that persons severally liable upon the same promissory note may all, or any of them, be included in the same action, a complaint declaring against the maker of a note on his written undertaking, and also against another party on a verbal promise to pay the same note, is not demurrable on the ground of improperly uniting two causes of action: *Gilmore v. Skookum Box Factory*, 20 Wash. 703, 56 Pac. 934.

§ 4837. Action not to abate.—Under Ballinger's Code, section 4837, which provides that a successor in interest to a party

to an action shall have one year in which to move the court for leave to continue the action as such successor, one to whom a lien claimant had assigned his claim after the commencement of action to enforce his lien is entitled at any time within a year to file and serve supplemental pleadings showing his succession in interest, and to have an adjudication upon his rights: *Powell v. Nolan*, 27 Wash. 320, 67 Pac. 712.

An action abates upon the death of plaintiff, where more than one year elapses thereafter without any disposition being made of it, and therefore it would not be a bar to the commencement of a second action by the administrator of decedent: *Overlock v. Shinn*, 28 Wash. 205, 68 Pac. 436.

§ 4840. Bringing in new parties.—Although Ballinger's Code, sections 4843-4845, which provide for the settlement of conflicting claims to property, make no provision for any judgment or any right, beyond asserting a claim to or lien upon property, money, or funds, yet such sections are but supplemental to the laws relative to procedure in courts of record, and the court may in such proceeding award judgment in favor of one defendant against any or all of the others, under Ballinger's Code, section 4840, which authorizes the court to determine any controversy between parties before it, when it can be done without prejudice to the rights of others: *Seattle v. Turner*, 29 Wash. 515, 69 Pac. 1083.

§§ 4843-4845. Interpleader.—Ballinger's Code, sections 4843-4845, do not require the complaint to allege that plaintiff has been sued or suit threatened, or that he is in danger of having judgment rendered against him twice for the same property, but any allegation which shows the fact that each of two different parties claims the property is sufficient: *Daulton v. Stewart*, 30 Wash. 562.

§ 4846. Intervention.—A third party has no right to intervene in an action merely because defendant is asserting an

adverse claim to such third party's property as well as to that of plaintiff, when the rights attempted to be set up by means of the intervention affect entirely different property from that involved in the plaintiff's action: *McNamara v. Crystal Min. Co.*, 23 Wash. 26, 62 Pac. 81.

The receiver of an insolvent bank is entitled to intervene in an action by the trustee of a pledgee of such insolvent bank, instituted for the purpose of establishing the validity of certain city warrants, which were the subject of the pledge, and which, the receiver claims, had been fraudulently and collusively sold by the pledgee to itself; and the fact that the bank, or its receiver, has another legal remedy for the enforcement of its claim is immaterial, under the terms of said statute: *Muhlenburg v. Tacoma*, 25 Wash. 36, 64 Pac. 925.

§ 4852. Of venue—Local actions.—In an action involving the title to land, which it is alleged has been transferred in fraud of creditors, the court may properly inquire into the title of lands in another county, when that matter arises incidentally as a part of the question raised upon the title to the land in litigation, and when such lands are alleged to be the consideration for the transfer which is attacked as fraudulent: *Carheek v. Bank*, 16 Wash. 399, 47 Pac. 884.

§ 4854. Venue — Corporations. — Under Ballinger's Code, section 4854, service of process issued out of the superior court of Clarke county upon a purser and a wharfinger in the employ of a foreign corporation is sufficient, where the company was operating a line of steamers on the Columbia river, which, under the charge of the purser, received and discharged freight and passengers at Vancouver, landing regularly at the wharf there for that purpose, and hence making the wharf an office in this state for the transaction of such business: *Sievers v. Dalles etc. Navigation Co.*, 24 Wash. 302, 64 Pac. 539.

§ 4855. Actions, transitory.—An action to recover unpaid purchase money due upon a conveyance of real estate is a transitory one, and cannot be made local by the prayer of the complaint that the sum due be declared a first lien on the premises and that they be sold to satisfy the same, since, in the absence of a reservation of a vendor's lien by agreement between the parties, such lien is not recognized in this state: *Smith v. Allen*, 18 Wash. 1, 63 Am. St. Rep. 864, 50 Pac. 783.

§ 4856. Change of venue—Action begun in wrong county.—A motion for a change of venue comes too late, where it is interposed at the close of plaintiff's case, upon the dismissal from the case of the only defendant residing in the county where the trial was had, when there is no showing that such defendant had been made a party in bad faith for the purpose of

enabling the venue to be laid in such county, since Ballinger's Code, section 4856, provides that a defendant entitled to a change of venue must apply therefor "at the time he appears and demurs or answers": *Rector v. Thompson*, 26 Wash. 400, 67 Pac. 86.

§ 4860. Transmission of record upon change of.—Under Ballinger's Code, section 4860, which provides that the court to which a change of venue is taken has the same jurisdiction over the action transferred as if it had been originally commenced therein, an information is amendable by the prosecuting attorney, on leave of the court of another county to which the prosecution has been transferred: *State v. Lyts*, 25 Wash. 347, 65 Pac. 530.

§ 4869. Service of summons.—Repeal of the law governing the commencement of civil actions and the service of summons therein and substituting therefor a new method of procedure will not affect the jurisdiction of the court over an action commenced under the prior law, but in which service of summons had not at that time been made, when the defendant voluntarily appears and answers in the action subsequent to the taking effect of the new law, which directly provides that a voluntary appearance is equivalent to personal service of summons: *City of Seattle v. O'Connell*, 16 Wash. 625, 48 Pac. 412.

§ 4873. Summons, service accompanied by copy of complaint.—Where a complaint had been served with a summons that was quashed, and an alias summons had thereafter issued and been served without a copy of the complaint, but notifying defendants the complaint was on file, the service was sufficient to give the court jurisdiction, of which it would not be deprived by failure to serve a copy of the complaint: *Mounts v. Goranson*, 29 Wash. 261, 69 Pac. 740.

§ 4874. Who shall serve.—Under Ballinger's Code, section 4874, which confers authority upon a private individual to make service of summons the same as a sheriff or his deputy, an individual who acts in place of the sheriff has no more power than the sheriff to waive or modify the written terms contained in the summons, unless expressly authorized by the plaintiff: *Washington Mill Co. v. Marks*, 27 Wash. 170, 67 Pac. 565.

§ 4875. How made on foreign corporation.—Service of summons upon an officer of a foreign corporation, who is temporarily present in the state, will not confer jurisdiction over the corporation, when the latter has never done any business in the state, nor maintained an office for that purpose nor appointed an officer or agent in the state for any purpose whatever: *Carstens v. Leidigh*, 18 Wash. 450, 63 Am. St. Rep. 906, 51 Pac. 1051.

On domestic corporation.—The finding of the lower court as to the legality of service upon a domestic corporation will not be disturbed on appeal so as to deprive that court of jurisdiction, where its decision is based upon a disputed question of fact as to whether or not the corporation had an office in the county or an officer therein upon whom service could be made, unless the lower court is clearly shown to have been wrong in its conclusions: *Zindorf v. Western Am. Co.*, 26 Wash. 695, 67 Pac. 355.

On minors.—Service of one copy of summons upon the father, in an action in which his three minor children were defendants, was sufficient, where a copy was left with each of the minors, since the object of the service is notice, and one copy served on the father would answer that purpose as well as an increased number of copies: *Morrison v. Morrison*, 25 Wash. 467, 65 Pac. 779.

Motion to quash—Cannot be carried to merits of case.—A court has no power to determine the merits of a cause of action upon a motion to quash the summons, but when the objections raised to the action are other than those relating to the sufficiency of the summons and the regularity of its service, they should be raised by

answer or demurrer: *Embree v. McLeennan*, 18 Wash. 652, 52 Pac. 241.

§ 4877. Service, constructive—Affidavit for.—The recital in a judgment of due service by publication raises the presumption, prima facie, of a valid service, and, on collateral attack, courts are bound to presume in support of the judgment that a sufficient showing of service of summons had been made: *Christofferson v. Pfennig*, 16 Wash. 491, 48 Pac. 264.

The affidavit in support of service by publication is sufficient, although it states conclusions instead of probative facts, and although it makes no reference to the property of the parties, since the disposition of the property is a mere incident of the divorce and follows from the action itself: *Goore v. Goore*, 24 Wash. 139, 63 Pac. 1092.

Where a summons by publication in an action for divorce notifies defendant that one of the objects of the action is to procure "the equitable distribution to plaintiff of the property, real and personal, of plaintiff and yourself," it is sufficient to notify the defendant that the disposition of his separate property, as well as that of the community, is contemplated, since the court has jurisdiction in divorce to dispose of all the property of the parties described in the complaint: *Id.*

§ 4877a. Constructive Service in Actions Against Unknown Heirs.

That when the heirs of any deceased person are proper parties defendant to any action relating to real property in this state, and when the names and residences of such heirs are unknown, such heirs may be proceeded against under the name and title of "The unknown heirs" of the deceased.

Upon presenting an affidavit to the court or judge, showing to his satisfaction that the heirs of such deceased person are proper parties to the action, and that their names and residences cannot with use of reasonable diligence be ascertained, such court or judge may grant an order that service of the summons in such action be made on such "unknown heirs" by publication thereof in the same manner as in actions against nonresident defendants.

That, in any action brought to determine any adverse claim, estate, lien, or interest in real property, or to quiet title to real property, the plaintiff may include as a defendant in such action, and insert in the title thereof, in addition to the names of such persons or parties as appear of record to have, and other persons or parties who are known to have, some title, claim, estate, lien, or interest in the lands in controversy, the following, viz.: "Also all other persons or parties unknown claiming any right, title, estate, lien, or interest in the real estate described in the complaint herein." And service of summons may be had upon all such unknown persons or parties defendant by publication as provided by law in cases of nonresident defendants.

All such unknown heirs of deceased persons, and all such unknown persons or parties, so served by publication as in the preceding section of this act, pro-

vided, shall have the same rights as are provided by law in case of all other defendants upon whom service is made by publication, and the action shall proceed against such unknown heirs, or unknown persons or parties, in the same manner as against defendants, who are named, upon whom service is made by publication, and with like effect; and any such unknown heirs or unknown persons or parties who have or claim any right, estate, lien, or interest in the said real property in controversy, at the time of the commencement of the action, duly served as aforesaid, shall be bound and concluded by the judgment in such action, if the same is in favor of the plaintiff therein as effectually as if the action was brought against such defendant by his or her name and constructive service of summons obtained: Provided, however, That such judgment shall not bind such unknown heirs, or unknown persons or parties, defendant, unless the plaintiff shall file a notice of lis pendens in the office of the auditor of each county in which said real estate is located, in the manner provided by law, before commencing the publication of said summons. [Approved Mar. 16, 1903; L. 1903, p. 277.]

§ 4879. Summons out of state, proof of. Under Ballinger's Code, section 4879, providing for personal service out of the state and declaring it equivalent to service by publication, no affidavit containing the facts essential to service by publication is essential in making personal service outside of the state upon a nonresident, when the court has assumed control of the property of the parties within this state: *Jennings v. Mining Co.*, 29 Wash. 726, 70 Pac. 136.

§ 4880. Opening default if no personal service.—Where a defendant seeks to have a judgment vacated because it appears on the face of the record that no service of summons was made upon him, his application therefor is governed by Ballinger's Code, section 4880, which provides that if the summons is not served personally on the defendant, he may, on application and sufficient cause shown, be allowed to defend after judgment, within one year after its rendition, on such terms as may be just; and such application may properly be made by motion and served in the manner prescribed for the service of motions; and the defendant is not compelled to resort to the procedure prescribed by Ballinger's Code, sections 5156, 5157, when it is sought to vacate a judgment under the provisions of section 5153: *Sturgiss v. Dart*, 23 Wash. 244, 62 Pac. 858.

Under the statutes and practice of this state, the authority of an attorney to represent his client does not cease with the rendition of judgment merely, but continues until he has obtained for his client a judgment not subject to vacation on motion for any of the causes especially provided by statute or recognized by well-established practice; and consequently an application for the vacation of a judgment for want of personal service on defendant

may be served on the attorney of the adverse party, instead of the party himself, the only exception thereto falling under the express provisions of Ballinger's Code, section 5153, subdivisions 2-7, which require service upon the party whose judgment is attacked the same as in original actions: *Sturgiss v. Dart*, 23 Wash. 244, 62 Pac. 858.

§ 4881. Joint debtors—Service on.—In an action against a partnership for the eloinment and conversion of sawlogs upon which plaintiff had a lien, a decree awarding judgment to be satisfied out of the joint property of all the partners is warranted, although but one of them was served with summons, where it appears that the defendant served purchased the logs in behalf of his firm and that the partnership converted the logs into shingles and destroyed their identity, since plaintiff had a right to waive the tort and recover the value of the property as on an implied contract, and under Ballinger's Code, section 4881, in an action against defendants jointly indebted upon contract, plaintiff may proceed against the defendants served and have judgment entered against all the defendants jointly indebted "so far only as it may be enforced against the joint property of all and the separate property of the defendants served": *Livingston v. Lovgren*, 27 Wash. 102, 67 Pac. 599.

§ 4882. Proof of service.—An abode once acquired is presumed to continue until it is shown to have been changed by acquiring another permanent abode, and the burden of proof rests upon the person asserting the change. In the case of a married man, the house of his usual abode is the house wherein his wife and family reside: *Northern Pacific etc. Bank v. Ridpath*, 29 Wash. 687, 70 Pac. 139.

The statements in a sheriff's return reciting facts not within his personal and official knowledge, but which are gathered by him from information received, are not conclusive, but are subject to contradiction: *Mitchell Lewis Staver Co. v. Oneil*, 16 Wash. 108, 47 Pac. 235.

Where a defendant has indorsed upon a summons that due and legal service thereof is accepted and admitted by him, he is estopped to afterward raise the objection that service was made upon him on a nonjudicial day: *McClellan v. Gaston*, 18 Wash. 472, 51 Pac. 1062.

The sheriff in his return to a summons set forth that defendant could not be found in the county and that to the best of his information he resided in New York city; an alias summons was issued and served by a private individual, who made affidavit that he served said defendant at the house of his usual abode in Spokane by leaving with his wife, then residing there, a copy of the summons and complaint. Held, that due service on defendant was shown, since the sheriff's return of nonresidence was not conclusive, but only presumptive evidence, inasmuch as the statute does not require such return to set forth the defendant's residence, and any presumption arising from such return was overcome by the affidavit of personal service: *Northern Pacific etc. Bank v. Ridpath*, 29 Wash. 687, 70 Pac. 139.

Where an affidavit of service of summons by a private individual merely recited conclusions of affiant as to such service, instead of setting forth necessary facts, it was sufficient to raise a presumption of proper service, and where such proof was not attacked in the original proceeding, but the court found that personal service had been made, a court of equity will sustain the judgment in a subsequent attack made on account of such irregularity: *Id.*

The return of service of a summons showing that it was left at the house of defendant's "usual abode in the city of Spokane" does not import that defendant had another residence elsewhere: *Id.*

The return of service of process, either by a sheriff or by a disinterested person authorized by law to make it, is prima facie evidence of the facts recited therein, and a court of equity should not set aside a judgment on the ground of lack of service except upon clear, satisfactory and convincing proof: *Id.*

In an action to set aside a judgment for lack of service, the fact that a defendant made statements on leaving the state to intimate friends or to his wife that he expected to locate elsewhere and not return would not be sufficient to establish that he had changed his residence, when his wife and family continued to reside in his usual place of residence, and he had been absent but a short time, engaged on

a pleasure trip, and had not taken up any definite abode, at the date service was made by leaving a copy of the summons and complaint for him with his wife at their usual place of abode: *Id.*

An affidavit attached to the original summons in an action, reciting that affiant served defendant by delivering to his wife at his usual place of residence, "a full, true, and correct copy of the complaint in said action," does not show a service of summons upon the defendant, and hence is insufficient to give the court jurisdiction over him: *Powell v. Nolan*, 27 Wash. 318, 67 Pac. 712.

§ 4883. Jurisdiction by appearance.—Where a citation to a former administrator has been issued in probate, and he appears and demurs to the petition upon which it is based, on the ground that it raises an issue as to the title and right of possession of property, the demurrer should be overruled, inasmuch as the court has jurisdiction under the code procedure to treat the petition as in the nature of a complaint in a civil proceeding, and to settle the issues thereunder by proper trial: *Filley v. Murphy*, 30 Wash. 1, 70 Pac. 107.

§ 4886. Appearance of defendant, subsequent proceedings.—Ballinger's Code, section 4886, which provides that defendant, after appearance in an action, is entitled to notice of all subsequent proceedings, is not applicable where defendant has been adjudged to be in default, and hence notice of proceedings subsequent to default is unnecessary: *Norris v. Campbell*, 27 Wash. 654, 68 Pac. 339.

Where a defendant who has entered a special appearance in an action afterward answers to the merits without preserving his special appearance, he thereby waives any rights thereunder, and renders his appearance general, under Ballinger's Code, section 4886; and the fact that the court had ordered a default entered unless he asked further time to plead would not excuse his subsequent answer to the merits, when the appearance and answer were voluntarily made under an agreement to do so in case certain proceedings were had, which were done accordingly: *Walters v. Field*, 29 Wash. 558, 70 Pac. 66.

§ 4887. Lis pendens—Subsequent conveyance—Constructive notice.—The provisions of Laws 1893, page 412, section 17, which declare that every person whose conveyance or encumbrance is executed or recorded subsequent to the filing of the notice of lis pendens shall be deemed a subsequent purchaser or encumbrancer and shall be bound by all proceedings taken after the filing of the notice, apply only to persons whose conveyance or encumbrance is taken from the parties to the suit and not from strangers to the record: *Johnson v. Irwin*, 16 Wash. 652, 48 Pac. 345.

Under Laws 1893, page 413, providing that every person whose conveyance or encumbrance is executed or recorded subsequently to the filing of lis pendens notice shall be deemed a subsequent purchaser or encumbrancer, and shall be bound by all proceedings taken after the filing of such notice to the same extent as if he were a party to the action, one who has taken a mortgage with knowledge of an outstanding unrecorded deed of the premises cannot bind the holder of the unrecorded deed by filing notice of lis pendens upon the institution of a suit to foreclose his mortgage: *Eldridge v. Stenger*, 19 Wash. 697, 54 Pac. 541.

A lis pendens notice may properly be signed by the attorney of the party desiring to file it as well as by the party himself: *Id.*

A finding that a lis pendens notice was recorded in the auditor's office on the date of its filing, when the evidence showed it was actually spread upon the records at a later date, would not constitute error, inasmuch as such notice, under Ballinger's Code, section 4887, becomes effective from the date of its filing: *Bigelow v. Brewer*, 29 Wash. 671, 70 Pac. 129.

Where a city fails to file a lis pendens notice pending an action by it to foreclose a street assessment lien, a bona fide purchaser of the land subject to the lien, pending the action but before the rendition of judgment, is not liable for the costs accruing subsequent to the date of transfer: *Dow v. Ballard*, 28 Wash. 87, 68 Pac. 176.

§ 4889. Service of notice.—A sheriff's return which shows that he served a motion and affidavit for a writ of mandamus "upon the within named defendants William Bishop, Sr., and W. A. Andrews, as members of the Jefferson county board of commissioners, by delivering a true copy thereof . . . to the above named, the said defendants, personally in Jefferson county," is not void for uncertainty, but sufficiently indicates personal service upon both of the defendants named: *State Savings Bank v. Davis*, 22 Wash. 407, 61 Pac. 43.

Service of a proposed statement of facts on appeal, made upon a clerk, is insufficient, when the attorney himself is present in the office: *Times Printing Co. v. Seattle*, 25 Wash. 149, 64 Pac. 942.

§ 4906. Of pleadings—Order in, failure to observe.—Where it appears that a plaintiff has complied with an order of the court requiring the complaint to be amended by setting forth certain findings in another case, an order striking the complaint for failure to comply is erroneous: *Keef v. Tibbals*, 18 Wash. 656, 52 Pac. 227.

§ 4907. Demurrer—Insufficiency of facts. A demurrer to a complaint asserting priority of lien over a mortgage upon an unse-

cured account for materials and supplies is properly overruled, if any item of the account is such as entitles the creditor to a preferred claim: *B. B. Imp. Co. v. Fairhaven Ry. Co.*, 17 Wash. 372, 49 Pac. 514.

A complaint is sufficient as against a general demurrer, although it does not contain a direct allegation of a necessary fact, if such matters are specifically alleged as make the existence of the necessary fact clearly appear from the other allegations: *Duryee v. Friars*, 18 Wash. 55, 50 Pac. 583.

Under the code system of pleading, where a complaint states facts sufficient to entitle plaintiff to relief, it is not demurrable because it does not state facts sufficient under the name he has given his action through a misconception of the nature of his remedial right: *Watson v. Glover*, 21 Wash. 677, 59 Pac. 516.

The objection that some of the allegations in a complaint are conclusions of law must be reached by motion and will not render the complaint subject to demurrer for want of facts, if the insufficiency pertains to the form rather than to the substance of the complaint, and if substantial facts constituting a cause of action can be inferred by reasonable intendment from the matters which are set forth: *Harris v. Halverson*, 23 Wash. 779, 63 Pac. 549.

Under the rule that, as against demurrer, every reasonable intendment and presumption is to be made in favor of the pleading, an allegation in a complaint that "said lease began and ended on the first day of each and every calendar month" is equivalent to an allegation of monthly tenancy, beginning on the first of each calendar month; and the allegation as to time of ending is mere surplusage: *Id.*

A demurrer for want of facts will not reach the objection that two causes of action have been improperly joined: *Marvin v. Yates*, 26 Wash. 51, 66 Pac. 131.

A demurrer to the complaint on the ground that it does not state facts sufficient to constitute a cause of action would not present the objection that it appears upon the face of the complaint that the action is barred by the statute of limitations: *Joergensen v. Joergensen*, 28 Wash. 477, 92 Am. St. Rep. 888, 68 Pac. 913.

A general demurrer to a complaint in an action against a corporation will not raise the objection that it fails to allege the incorporation of the defendant company: *Sly v. Mining Co.*, 28 Wash. 485, 68 Pac. 871.

The objection that a complaint, for portions of its second, third and fourth causes of action, alleges that certain paragraphs of the first cause of action are repeated and made a part of the succeeding causes set forth cannot be raised by demurrer: *Id.*

§ 4910. Where complaint is amended.—While an original complaint does not cease

to be a part of the record by reason of the filing of an amended complaint, nevertheless the plaintiff cannot avail himself of any allegations contained in the original complaint, although his adversary may: *Sengfelter v. Hill*, 16 Wash. 355, 58 Am. St. Rep. 36, 47 Pac. 757.

§ 4911. Waiver of objections to pleadings—Insufficiency of fact, never waived.

On an appeal by the plaintiff in a personal injury case, the respondent is entitled to urge, although the objection was not raised in the lower court, that the complaint does not state a cause of action, for the reason that it shows contributory negligence on the part of the plaintiff: *O'Toole v. Faulkner*, 29 Wash. 544, 70 Pac. 58.

In an action in the name of the state on the relation of the attorney general demanding by what warrant defendant claims to enjoy certain franchises, an answer that it is no concern of the state nor of its attorney general is, in effect, a demurrer on the ground that the complaint fails to state facts constituting a cause of action, and, under Ballinger's Code, section 4911, such objection can be urged in the supreme court, though no ruling thereon was had in the superior court: *State ex rel. v. Gas etc. Co.*, 28 Wash. 488, 68 Pac. 946.

Where a complaint fails to state a cause of action, a demurrer on that ground is not waived by filing an answer, since the objection can be raised at any stage of the case: *Jones v. St. Paul etc. Ry. Co.*, 16 Wash. 25, 47 Pac. 226.

Objection must be specific.—Where the specific ground upon which objection is raised to a complaint as not stating facts sufficient has not been urged in the lower court, the complaint will be liberally construed upon that point on appeal: *County of Island v. Babcock*, 17 Wash. 438, 50 Pac. 54.

Misjoinder of parties.—Where a party entitled to urge the objection of misjoinder of parties plaintiff waives the objection, it cannot be raised for him by another defendant: *Gleason v. Tacoma Hotel Co.*, 16 Wash. 412, 47 Pac. 894.

§ 4912. Answer—Denial of knowledge, etc.—Where the complaint avers an agreement between plaintiff and defendant, a denial of information or knowledge sufficient to form a belief as to the facts alleged is not sufficient to raise any issue of fact, as the presumption is that the defendant has positive knowledge whether or not the averment is true: *Raymond v. Johnson*, 17 Wash. 232, 61 Am. St. Rep. 908, 49 Pac. 492.

General denial—Admissibility of evidence under.—In an action for malicious prosecution, evidence tending to show probable cause is admissible under the general denial, without being specially

pleaded as a defense: *Kellogg v. Scheuerman*, 18 Wash. 294, 51 Pac. 344.

Inconsistent defenses.—Where defendant in an action to recover the price of materials answers by general denial and also that it had paid another party for such materials, it was not error to refuse to compel defendant on motion to elect between its plea of general denial and of payment, since the answer of payment to someone else than plaintiff is an immaterial averment and constitutes no defense: *Norris Safe etc. Co. v. Clark*, 28 Wash. 268, 68 Pac. 718.

Answer may contain denial of liability on claim stated in complaint, and also contain counterclaim or setoff, without being open to the charge of inconsistency or repugnance: *Davis v. Seattle Nat. Bank*, 19 Wash. 65, 52 Pac. 526.

§ 4913. Counterclaim.—In an action by a city to recover benefits for street improvements, the defendant cannot offset a claim for materials furnished the contractor who had charge of making the improvements: *City of Whatcom v. B. B. Imp. Co.*, 16 Wash. 138, 47 Pac. 1102.

Under Code of Procedure, section 195, subdivision 2, a cause of action cannot be pleaded as a counterclaim if it did not exist at the commencement of the action in which it is pleaded, unless it is one arising out of the contract or transaction set forth in the complaint: *Conner v. Scott*, 16 Wash. 371, 47 Pac. 761.

Under Ballinger's Code, section 4913, subdivision 1, defendant may, in an action for the foreclosure of a mortgage, counterclaim for damages suffered by reason of the occupation and use of the premises by plaintiff prior to foreclosure, since the realty upon which the mortgage lien is sought to be enforced is connected with the subject of the action, within the purview of the rule that statutes authorizing counterclaims should be liberally construed: *First Nat. Bank v. Parker*, 28 Wash. 234, 92 Am. St. Rep. 828, 68 Pac. 756.

In a suit by a receiver to recover upon a demand due an insolvent corporation, the defendant may, under Code of Procedure, section 195, subdivision 2, set up as a setoff or counterclaim any unliquidated demand arising on a contract of the corporation and existing at the commencement of the action: *Sheafe v. Hastie*, 16 Wash. 563, 48 Pac. 246.

A debt due from a devisee can be retained from his portion of the real estate by the executor under the doctrine permitting the setoff of one debt against another: *Bover v. Robinson*, 26 Wash. 118, 66 Pac. 119.

§ 4913a. Answer—What it may contain. A person made defendant in a suit for the foreclosure of a mortgage is entitled to in-

terpose a legal defense establishing a right of possession in the land in controversy: *Hanna v. Reeves*, 22 Wash. 6, 60 Pac. 62.

§ 4917. **Reply—Departure.**—New matter, not inconsistent with the complaint, constituting a defense to new matter set forth in the answer, may be alleged in the reply, without being open to the objection of being a departure from the cause stated in the complaint: *McCorkle v. Mallory*, 30 Wash. 632, 71 Pac. 186.

In an action to foreclose a lien for materials furnished under contract for the construction of a house, in which the answer sets up the contract in *haec verba* and alleges a breach of the conditions thereof, the fact that the reply admits the contract as set forth in the answer and sets up matter in avoidance of the alleged breach does not constitute a departure, since the facts alleged in the reply do not show a different contract from that set up in the complaint, and evidence of facts alleged in the reply could be received under the allegations of the complaint: *Lumber Co. v. Page*, 28 Wash. 128, 68 Pac. 373.

In an action by a light company to enjoin a city and its officers from interfering with the company's franchise to which a defense has been interposed that the franchise was forfeited, a reply setting up matters showing a waiver of forfeiture on the part of the city does not constitute a departure in pleading: *Com. Electric Light Co. v. Tacoma*, 17 Wash. 662, 50 Pac. 592.

The fact that plaintiff, in an amended complaint, adds what she calls "a supplementary amendment," stating that at a time subsequent to the commencement of the action plaintiff and her husband had selected a homestead in the premises in controversy and filed notice thereof pursuant to the provisions of the act of March 13, 1895, does not constitute a departure, where the original complaint had set up a claim of homestead, by alleging that the premises were then, and for more than ten years last past had been, the homestead of husband and wife: *Id.*

§ 4930. **General rules of pleading—Bills of particulars.**—The defendant is not entitled to a bill of particulars when its only office would be to make plaintiff disclose the specific evidence upon which he relies for a recovery: *Blackburn v. Washington Gold Min. Co.*, 19 Wash. 361, 53 Pac. 369.

The fact that a bill of particulars furnished upon the oral request of counsel for the adverse party, was not filed before trial, nor referred to at the time of trial is immaterial, since parties voluntarily furnishing a statement of items under their claim for damages are bound by it as fully as though furnished under the order of the court: *Howells v. North American etc. Co.*, 24 Wash. 690, 64 Pac. 786.

The objection that a bill of particulars

filed by plaintiff amplifies the claim set up in his complaint into two causes of action improperly united, would not render the complaint itself demurrable on the ground of improper joinder, since a bill of particulars is not a pleading and is not a part of the complaint except to the extent of restricting the proof to the matters therein specified: *Dudley v. Duvall*, 29 Wash. 528, 70 Pac. 68.

The fact that a bill of particulars presents a case different from the complaint does not constitute a departure in pleading: *Id.*

A bill of particulars furnished by plaintiff in response to a motion by defendant is admissible in evidence on the part of defendant, although no order against plaintiff to furnish the bill is shown by the record as ever having been made: *Copper etc. Works v. Galland-Burke B. & M. Co.*, 30 Wash. 178, 70 Pac. 236.

§ 4931. **Pleadings liberally construed.**—In the absence of a demurrer, a complaint is entitled to be liberally construed respecting the necessary allegations: *Hall v. Woollery*, 20 Wash. 440, 55 Pac. 562.

Under Ballinger's Code, section 4931, which provides that the allegations of a complaint must be liberally construed, with a view to substantial justice between the parties, an allegation that defendants "eloigned and converted to their own use about 133,000 feet of said logs which were of the value of \$675" must be construed as sufficient, where no motion to make more definite and certain was interposed: *Livingston v. Lovgren*, 27 Wash. 102, 67 Pac. 599.

§ 4932. **Redundancy — Immateriality.**—The denial of a motion to strike allegations of a reply constituting a collateral attack upon a judgment is not error, as the objection on that ground should be taken by demurrer, which would raise the question of the sufficiency of the facts stated to show that the judgment was void, since it is only void, and not erroneous, judgments that may be collaterally attacked: *Kizer v. Cauffield*, 17 Wash. 417, 50 Pac. 1064.

Paragraphs of a pleading containing averments relating to certain alleged oral conversations and agreements between the parties to an action were properly stricken as immaterial, where the pleading itself set up a written agreement subsequently entered into concerning the same subject matter as the alleged previous oral agreement: *Jordan v. Coulter*, 30 Wash. 117, 70 Pac. 257.

The refusal of the court to strike out a paragraph of a complaint alleging the insolvency of a bank was not prejudicial error, where such insolvency was shown without objection during the trial of the cause: *Rattlemiller v. Stone*, 28 Wash. 104, 68 Pac. 168.

See Lane 1905, page 13.

§ 4938a. Libel and Slander—Prior Notice and Retraction—Effect of.

Before any action shall be brought for the publication of a libel in any newspaper in this state, the aggrieved party shall at least three days before the filing or serving of the complaint or summons in such suit or action, serve notice on the publisher or publishers of said newspaper at their principal office of publication, specifying the statements in said article which such party alleges to be false and defamatory. If it shall appear on the trial of said action that the article was published in good faith, that its falsity was due to mistake or misapprehension of the facts and that a full and fair retraction of any statement therein alleged to be erroneous, false or defamatory was published in each copy of the next three regular issues of such newspaper, or in case of daily papers within three days after such mistake or misapprehension was so brought to the knowledge of such publisher or publishers in as conspicuous a place and type in such newspaper as was the article complained of as libelous, then the plaintiff in any such civil action shall recover only actual damages; Provided, however, That the provisions of this act shall not apply to the case of any libel against any candidate for a public office in this state unless the retraction of the charge is made editorially in a conspicuous manner at least three days before the election.

The words "actual damages" in the foregoing section shall be construed to include all damages that the plaintiff may show he has suffered in respect to his property, business, trade, profession or occupation and no other damages whatever.

No civil action for libel can be maintained against a reporter, editor, publisher, or proprietor of a newspaper for publication therein of a fair and true report of anything occurring at a public place or of any judicial, legislative or other public or official proceeding or of any statement, speech, argument or debate in the course of the same, or of the contents of any pleading in any court without proving actual malice. [Approved Mar. 13, 1899; L. 1899, p. 101.]

§ 4940. Slander actionable.—Under Code of Procedure, section 798, making every charge of fornication or whoredom falsely made against a female actionable as slanderous, such communications to third parties as, "She is nothing but an old whore," "This woman acknowledges that you sleep with her every night and I have reason to know that you are not the only one," and "She is an objectionable character; that man Adams is keeping her," if false entitle the woman injured thereby to a right of action for defamation of character. Defamatory words spoken of another to an officer of the law are not privileged communications, unless made for the purpose of preventing a crime or for the purpose of detecting and bringing a criminal to punishment. Where one recklessly makes defamatory remarks concerning another, stating as true what he does not know to be true, by reason of anger or spite, malice will be presumed. In an action for defamation of character, the failure to

charge in the complaint that the words were maliciously spoken is not objectionable, if other words expressive of malicious intent are used: *Stewart v. Major*, 17 Wash. 238, 49 Pac. 503.

§ 4942. Joinder of causes of action.—An action against the principal and sureties upon an injunction bond for the penalty therein named and against the principal in a further sum for maliciously instituting the injunction proceeding for the purpose of harassing and injuring plaintiffs is demurrable on the ground of misjoinder of actions, one being based on contract, the other in tort: *Willey v. Nichols*, 18 Wash. 528, 52 Pac. 237.

It is not a misjoinder of causes of action to unite in one complaint an action for the recovery of damages for the breach of a contract, and an action which sets up the same contract and alleges that plaintiff, in order to fulfill it, erected certain buildings and camp equipment, and that defendant wrongfully took pos-

session thereof and refused delivery on demand: *McCorkle v. Mallory*, 30 Wash. 632, 71 Pac. 186.

Separate counts.—In an action to foreclose a mortgage securing a series of notes it is not necessary to state a separate cause for each note, but they may all be properly set forth as one cause of action: *Seattle Trust Co. v. Kerry*, 19 Wash. 389, 53 Pac. 665.

Under Ballinger's Code, section 4942, which permits several causes of action to be united when they all arise out of contract, an action on a contract for services and one upon a guaranty may be united in the same action: *Dudley v. Duvall*, 29 Wash. 528, 70 Pac. 68.

§ 4949. Variance — When material. — In an action for the rescission of a contract of sale on the ground of fraudulent representations, the refusal of the court to allow plaintiff to amend his complaint so as to conform to the proof is not error, when the complaint has alleged generally that the purchasers represented themselves to be solvent, and in good financial condition, and the testimony offered by plaintiff tended to show specific misrepresentations on the part of the purchaser, as such amendment would materially change the issues. The refusal of the court to allow an amendment to a complaint, if erroneous, is harmless, where no other result could have been reached under the evidence than the verdict rendered: *Price Baking Powder Co. v. Kinear*, 17 Wash. 95, 49 Pac. 223.

The rule that in equity proceedings the pleadings may be considered as amended in accordance with the proof offered, cannot be invoked when it would work an injury to the other party by taking him by surprise and by compelling him to litigate an essential question concerning which he had had no notice: *Scholey v. De Mattos*, 18 Wash. 504, 52 Pac. 342.

The action of the court in giving judgment for defendants because of variance between the pleadings and proof of plaintiffs being erroneous, under Ballinger's Code, sections 4949, 4950, which provide that in case of variance the court may order the pleading to be amended upon such terms as shall be just, if the adverse party has been misled, or may order an immediate amendment without costs, when the variance is not material, it was proper for the court to correct its ruling by granting a new trial upon motion therefor: *Ernst v. Fox*, 26 Wash. 526, 67 Pac. 258.

Where a complaint in an action was founded on the theory that defendant, while acting as custodian of goods under a levy by the sheriff, had converted same to its own use, plaintiff could not recover upon a contract to the effect that defend-

ant had a lien on the goods for freight and wharfage charges and had agreed to notify plaintiff in case it became necessary for it to dispose of the goods: *Koyukuk Min. Co. v. Van Devanter*, 30 Wash. 385, 70 Pac. 966.

§ 4950. Variance, immaterial—Amendment.—The fact that the complaint alleges complete performance of a specific contract, while the proof shows a part performance only and an excuse for non-performance of the contract in its entirety, does not constitute a failure of proof, but a variance merely, and, under Ballinger's Code, section 4950, a variance, even if material, is not ground for dismissal of the action, but the court is authorized to order the pleadings amended upon such terms as may be just upon a showing that the adverse party has been misled to his prejudice by the variance: *Olson v. Snake River Valley R. R. Co.*, 22 Wash. 139, 60 Pac. 156.

Where the complaint in an action upon an accident policy to recover for the death of the insured alleged that he fell and bruised his left side, directly over the heart, and died as a direct result of such injury, and a bill of particulars filed in connection with such complaint alleged that the death of the insured was caused by the injuries to his side, and the character of the injuries causing his death were described as being a bruise and injury upon the side directly over the heart, causing a malignant growth of spleen and fatty degeneration of the heart, the ultimate fact alleged is that the death was caused by the injury to his side, and the pleader's conclusion that the injury produced malignant growth of spleen and fatty degeneration of the heart, while the evidence showed that the injury produced inflammation of the pericardium instead, would constitute but an immaterial variance, which could not have misled the defendant to its prejudice: *Mercier v. Travelers' Ins. Co.*, 24 Wash. 147, 64 Pac. 168.

The admission in evidence of a written instrument, which is incorrectly described in plaintiff's complaint, is not error of which defendant can complain, when the instrument is properly pleaded in defendant's answer and correctly described in plaintiff's reply: *Rattlemiller v. Stone*, 28 Wash. 104, 68 Pac. 168.

Where a complaint alleges that a contract for furnishing materials for the construction of a building was fully performed by the delivery of the materials and the actual use thereof in the building, any showing of an extension of time for the delivery of the materials would not amount to a failure of proof under the allegations of the complaint, but would be no more than an immaterial variance:

Childs Lumber Co. v. Page, 28 Wash. 128, 68 Pac. 373.

Where a complaint alleged that defendants' negligence consisted in driving a wagon ahead of a street-car and, instead of stopping to allow the car to pass, attempt was made to drive the team between the car tracks and plaintiff's horse and wagon standing at the curb, where the space was too narrow and a collision resulted to the injury of plaintiffs, evidence that the car had passed defendant's wagon some distance down the street, occasionally stopping to let passengers off, and that when the car was opposite plaintiffs' horse defendant attempted to pass the car by driving between it and the horse and wagon of plaintiffs, constitutes merely an immaterial variance, warranting amendment of the complaint on the trial to correspond with the proofs: Woolf v. Hemrich Co., 28 Wash. 187, 68 Pac. 440.

Under Ballinger's Code, section 4949, which provides that no variance shall be deemed material, unless it shall have actually misled the adverse party, the fact that plaintiff proved only a partial destruction of his property by reason of the fumes arising from defendant's smelter, while his complaint asked damages for the total destruction of his property, would be but an immaterial variance: Sterrett v. Mining Co., 30 Wash. 164, 70 Pac. 266.

§ 4953. Amendments of pleadings—Abuse of discretion.—The action of the trial court in allowing plaintiff to amend his complaint and in denying defendant's motion for a continuance, are not grounds of reversal, when there is no showing of an abuse of the discretion lodged in the court in such matters: Ogle v. Jones, 16 Wash. 319, 47 Pac. 747.

The refusal of the trial court to allow an amendment to the answer in a cause is not ground of reversal, in the absence of a showing of abuse of the discretion lodged in the court in the matter of amendments: West Seattle Land etc. Co. v. Herren, 16 Wash. 665, 48 Pac. 341.

The refusal of the court to allow defendant to file an amended answer setting up a substantial defense to the action is an abuse of the court's discretion, when it appears that, after the pleadings had reached an issue, the plaintiff was allowed to file an amended or supplemental complaint to which the defendant had interposed a general denial by oversight, instead of pleading an affirmative defense, which had already been interposed to the original complaint; and that the allowance of the amendment could not be objected to by plaintiffs on the ground of surprise: Van Lehn v. Morse, 16 Wash. 672, 48 Pac. 404.

The refusal of the court to permit an

intervener in an action for foreclosure to file an amended cross-complaint setting up fraud as to creditors in the execution of mortgages by an insolvent corporation is not prejudicial, when the cause has been tried and determined on that issue, and a receiver appointed for the corporation charged with the duty of administering its property as a trust fund for the benefit of all the creditors according as their rights therein may appear: Biddle Pur. Co. v. Townsend Steel etc. Co., 16 Wash. 681, 48 Pac. 407.

In an action to quiet title in which the defendants had set up the defense that the taxes on the land in controversy had been paid by them, it was not an abuse of discretion for the court to permit the plaintiff on the trial to amend her complaint by interlineation so as to show payment of taxes for certain years by her grantor: Newman v. Buzard, 24 Wash. 225, 64 Pac. 139.

The fact that plaintiff's reply showed a departure from his complaint as originally filed cannot be urged as error, where the lower court authorized the complaint to be amended on the trial to correspond to the evidence, whereby the objection of departure in the pleadings was at the same time eliminated: Whitney v. Priest, 26 Wash. 48, 66 Pac. 108.

In an action for the rescission of a contract on the ground of fraud, it was error for the court to refuse a continuance to defendant, where the plaintiff on the trial had been allowed to amend his complaint so as to set up an additional fraudulent representation, and the testimony of the only witness for defendant who could disprove the allegation had been taken by deposition in another state before that issue had been raised: Elbridge v. Young Am. Min. Co., 27 Wash. 297, 67 Pac. 703.

The action of the court in permitting plaintiff at the close of the testimony to amend her complaint so as to correspond to the proof was not error, where defendant's answer theretofore filed had negatived the truth of the matters set up in the amendment and evidence upon both sides had been directed to that issue: Morrissey v. Faucett, 28 Wash. 52, 68 Pac. 352.

An application by defendants to amend their answer so as to question the individual liability of one of them, made at the commencement of a second trial after the cause had been once tried and appealed on the same pleadings, is a matter peculiarly within the discretion of the superior court, and its action will not be disturbed in the absence of a showing of abuse of such discretion: Bishop v. Averill, 19 Wash. 490, 53 Pac. 726.

The refusal of the court to permit plaintiffs to amend their complaint during trial does not show abuse of discretion, when

the amendment would introduce a new element of damages in addition to those claimed in the complaint: *Anderson v. Harper*, 30 Wash. 378, 70 Pac. 965.

A party is entitled to amend his pleading at the close of the evidence to correspond to the evidence introduced, when it contains no new allegations, tending in any way to surprise or mislead the adverse party, and when its only effect would be to harmonize the allegations of his pleading: *Allend v. Spokane Falls & N. Ry. Co.*, 21 Wash. 324, 58 Pac. 244.

The action of the court in allowing defendant to withdraw his demurrer and interpose a second one setting up the additional ground that the action was barred by the statute of limitations was within the discretion vested in the court, under the statute authorizing amendments in furtherance of justice: *McClaine v. Fairchild*, 23 Wash. 758, 63 Pac. 517.

In an action by the owners of premises to recover restitution and damages for detention, in which defendant pleaded a surrender and cancellation of an outstanding unexpired lease held by another, and that thereupon plaintiffs entered into an express agreement with him, whereby he was to have possession of the premises described for a period of one year, the filing of an amended answer by defendant, after issue joined, setting up certain facts by way of an equitable estoppel does not amount to an abandonment of the original defense and such a departure as to take plaintiffs by surprise, when the second answer is, in effect, an extended explanation of the particular manner in which the defendant came into possession of the premises, and the reasons for entering into the contract: *Brown v. Baruch*, 24 Wash. 572, 64 Pac. 789.

The fact that the court permits plaintiff to amend her complaint a number of times does not establish in itself an abuse of the discretion given the court in such matters: *Ross v. Howard*, 25 Wash. 1, 64 Pac. 794.

In an action by plaintiff to recover upon a contract which he had entered into as agent for another, and had been compelled to carry out himself because of his principal's refusal to furnish the materials under the contract made in its name, it was error to refuse plaintiff's offer to amend his complaint on the trial so as to show an assignment of the contract to him by his former principal: *Norris Safe etc. Co. v. Clark*, 28 Wash. 268, 68 Pac. 718.

Judgments—Vacation of.—Where plaintiff dismisses his action, through mistake or inadvertence, he cannot afterward, upon three days' notice, bring the defendant again into court, upon a motion to vacate the order dismissing the cause

and for the reinstatement of the cause: *Chehalis County v. Ellingson*, 21 Wash. 638, 59 Pac. 485.

It is also held in this case that the same notice and proceeding is required under this section as is required under section 5157. An application under Ballinger's Code, section 4953, for the vacation of a judgment upon the grounds of mistake, inadvertence, surprise, and excusable neglect is properly made by motion, since the procedure by petition for the vacation of judgments is applicable only to the particular cases set forth in Ballinger's Code, section 5156, which specially prescribes the procedure to be followed in those cases alone (*Whidby Land etc. Co. v. Nye*, 5 Wash. 301, explained): *Spokane & Idaho Lumber Co. v. Stanley*, 25 Wash. 653, 66 Pac. 92.

Three days' notice of hearing upon a motion made for the vacation of a judgment upon the grounds afforded by Ballinger's Code, section 4953, is sufficient: *Id.*

The action of the court in setting a motion for the vacation of a judgment for hearing upon the third day after service of notice thereof, while the court rules forbid the court from setting causes, except emergency cases, for hearing earlier than ten days after being noted for that purpose, will be presumed harmless error, in the absence of a showing that it resulted in prejudice: *Id.*

A judgment which has been irregularly obtained may be vacated and set aside by the court on motion therefor, although a remedy by petition is afforded by Ballinger's Code, section 5156: *Griffith v. Maxwell*, 25 Wash. 658, 66 Pac. 106.

Excusable neglect justifying the vacation of an order of dismissal for want of prosecution of an action is not established by a showing that counsel were engaged in other courts at the time the case was called for trial: *Spokane Co. v. Colfelt*, 30 Wash. 628, 71 Pac. 196.

Provision of section 4953 is broad enough to include a proceeding to set aside a void judgment instituted by the person in whose favor the judgment was rendered, where the invalidity was due to the failure to include proper parties: *Dane v. Daniel*, 28 Wash. 156, 68 Pac. 446.

Upon motion to set aside a void judgment, twenty days' notice is not necessary, as in applications under Ballinger's Code, section 5157, for the vacation of judgments, but it is sufficient if three days' notice is given to the adverse party: *Id.*

Service of a motion to vacate a void judgment may be made upon the attorneys of the adverse party in the original action, since an attorney's authority to represent his client does not cease until

a judgment not subject to vacation has been recovered: *Id.*

Although the receiver of an insolvent bank may have had no notice of the pendency of a suit to received judgment on a claim rejected by him, he is not entitled to have the judgment vacated on the ground of mistake, inadvertence, surprise or excusable neglect, under Code of Procedure, section 221, when he has waited for more than a year with knowledge of the judgment before moving the court for relief against it: *Denton v. Merchants' Nat. Bank of Seattle*, 18 Wash. 387, 51 Pac. 473.

Where a party to a mortgage foreclosure has been induced not to appear and interpose a meritorious defense by reason of the statement of the attorney for plaintiff that no personal judgment would be taken against him, and that he had been made a party defendant merely for the purpose of clearing the record, the party aggrieved may properly pursue his remedy under Code of Procedure, section 221, which affords relief from a judgment taken against a party through his mistake, inadvertence, surprise or excusable neglect.

While the matter of vacating a judgment in accordance with the provisions of Code of Procedure, section 221, is a matter within the sound discretion of the court, the refusal of the court to grant a motion seasonably made therefor is such an abuse of discretion as to warrant reversal, where it appears that the moving party has a meritorious defense against the rendition of a personal judgment against him in foreclosure proceedings, but that it had not been interposed by him owing to an agreement of the mortgagee's attorney not to take personal judgment; and when it further appears that, if the application is denied, the aggrieved party will be forever barred from asserting or claiming any legal benefit of the facts constituting his defense: *Hull v. Vining*, 17 Wash. 352, 49 Pac. 537.

An order of the superior court vacating a judgment of dismissal of an action for failure of plaintiff to appear at the trial, on the ground, as authorized by Code of Procedure, section 221, that the judgment was obtained against plaintiff through mistake, inadvertence, surprise or excusable neglect, does not constitute an order granting a new trial; and hence is not an appealable order on the ground of being one awarding a new trial: *Hart Lumber Co. v. Rucker*, 17 Wash. 600, 50 Pac. 484.

Amendments—After reversal on appeal. It is held in *Richardson v. Carbon Hill Coal Co.*, 18 Wash. 368, 51 Pac. 402, 1046, that after reversal, in a case where negligence was charged in causing the injury,

and by the unskillful treatment of the surgeon provided by the defendant company, it was not error to permit an amendment charging negligence in the selection and employment of an unskillful surgeon and that such amendment did not state a new and independent cause of action. It is further held that the absence of any direction from the mandate of the supreme court to the superior court to permit an amendment would not preclude the superior court in permitting such amendment.

Where a cause is reversed and remanded for further proceedings not inconsistent with the decision on appeal, the matter of allowing amendments to the pleadings remains within the discretion of the trial court: *Interstate Savings etc. Assn. v. Knapp*, 20 Wash. 225, 55 Pac. 931.

§ 4957. Harmless error must be disregarded.—An answer in an action for conversion of plaintiff's goods, which alleges that "For further and affirmative answer to said complaint, defendant says that more than three years elapsed between the accruing and commencement of plaintiff's alleged cause of action," while defective as a plea of the statute of limitations, is yet sufficient to put the plaintiff on notice that the statute would be relied on as a defense, and, where not moved against in the lower court by demurrer or motion, will on appeal be considered as amended, under Ballinger's Code, sections 4957, 6535, since no substantial right of the plaintiff was affected by its defectiveness: *Kinhead v. Holmes etc. Co.*, 24 Wash. 216, 64 Pac. 157.

Under Ballinger's Code, section 4957, which directs the supreme court to disregard any error or defect which does not affect a substantial right of the adverse party, and *Id.*, section 6535, which requires the court to determine all causes on appeal upon the merits thereof, disregarding all technicalities, and to consider all amendments which could have been made as made, a cause will not be reversed, after a trial upon the merits, merely for the reason that the cause of action was defectively stated, when there is no showing of substantial injury resulting to appellant on account thereof: *Green v. Tidball*, 26 Wash. 339, 67 Pac. 84.

§ 4958. Supplemental pleadings.—Allowing defendant to file a supplemental answer is a matter within the discretion of the court, and will only be disturbed upon a showing of abuse: *McDaniels v. Gowey*, 30 Wash. 412, 71 Pac. 12.

§ 4967. Jury trial, right of.—The constitutional provision declaring that "the right of trial by jury shall remain inviolate" has reference to the right to jury trial as it existed in the territory

at the time when the constitution was adopted. As the right to trial by jury in quo warranto proceedings did not exist at common law at the date of the early settlement of this country, nor was authorized by statute at the date of the adoption of the state constitution, the constitutional provision, that "the right of trial by jury shall remain inviolate," is inapplicable in proceedings to try the right to a public office: *State ex rel. Mullen v. Doherty*, 16 Wash. 382, 383, 58 Am. St. Rep. 39, 47 Pac. 958.

Where the pleadings in a case filed in probate raise the issue as to the right of possession of real and personal property, a jury trial is demandable, under Ballinger's Code, section 4967, which provides that an issue of fact in an action for the recovery of specific real or personal property shall be tried by a jury, unless a jury be waived: *Filley v. Murphy*, 30 Wash. 1, 70 Pac. 107.

Defendant is entitled to a jury trial, where plaintiff sues upon a contract for legal services and seeks to recover a specific and designated fund in the hands of the probate court, and hence is an action for recovery of specific personal property: *Winston v. Crowe*, 28 Wash. 65, 68 Pac. 174.

An action to enjoin defendant from enforcing a judgment against plaintiff being an independent suit for equitable relief and not an application under Ballinger's Code, sections 5153-5162, for a retrial in the original action, neither party is entitled to demand a jury trial: *Spokane etc. Min. Co. v. Pearson*, 28 Wash. 118, 68 Pac. 165.

§ 4970. Trial, notice of.—Notice of the time a cause will be tried need not be served upon the adverse party, under Laws 1893, page 416, section 35, providing that notice of setting the cause for trial shall be served on the opposite party three days before any time fixed by the rules of court for setting causes for trial, and that the cause will be brought on for trial at such time as the court shall fix: *Western Security Co. v. Lafleur*, 17 Wash. 406, 49 Pac. 1061.

It is unnecessary to give notice of the trial of a cause which had been reversed on appeal and remanded to the lower court for new trial: *Spokane Co. v. Colfelt*, 30 Wash. 628, 71 Pac. 196.

§ 4972. Pleadings to be filed, when.—Judgment in an action is erroneous, under Ballinger's Code, section 4972, unless the summons and complaint therein have been filed with the clerk of the court; and, under Ballinger's Code, section 4886, where no notice has been given to the adverse parties of the application for the judgment: *Ashcraft v. Powers*, 22 Wash. 441, 61 Pac. 161.

§ 4977. Continuance — Sufficiency of showing for.—The refusal of the court to grant a continuance because of the sickness of defendant, who is a material witness in the action, is not an abuse of discretion, when no proof of sickness is submitted with the application for continuance, but merely an affidavit that affiant was told by a relative that defendant was sick and could not be present: *McClellan v. Gaston*, 18 Wash. 472, 51 Pac. 1062.

A motion for a continuance was properly denied, when the affidavit in support thereof failed to set out the evidence on account of the absence of which the motion was made, and there was no showing that the absent witness would be present at a later trial or that he could be found, or his evidence produced at the trial: *Shannon v. Consolidated Tiger & Poorman Min. Co.*, 24 Wash. 119, 64 Pac. 169.

The fact that the court compelled the accused in a criminal case to go to trial in the absence of some of his witnesses was not error, where no motion for a continuance was made: *State v. Newton*, 29 Wash. 374, 70 Pac. 31.

A motion for continuance was properly denied, when there was not a sufficient showing of diligence, nor that the desired evidence was not cumulative: *Maggs v. Morgan*, 30 Wash. 605, 71 Pac. 188.

§ 4978. Jurymen — Qualification of.—Jurors must be householders, whether summoned on a regular panel or on an open venire to complete the panel, under Laws 1895, page 139, providing that jurors summoned to serve on grand and petit juries shall be householders, and under Code of Procedure, section 339, which requires a juror summoned on an open venire to have the same qualifications as if he had been previously selected on the original list: *State v. Lattin*, 19 Wash. 57, 52 Pac. 314.

§ 4983. Particular causes of challenges. The fact that a juror has formed an impression as to the guilt or innocence of defendant from having read an account of the homicide in a newspaper and talked about it with his neighbors would not disqualify him, where it appeared that such opinion or impression was a qualified one, which he could disregard absolutely upon the trial of the case: *State v. Farris*, 26 Wash. 205, 66 Pac. 412.

It is not ground of challenge for cause to a juror on the ground of entertaining an opinion as to the guilt or innocence of a defendant, when the juror has not voluntarily testified to such fact, but has been led into the expression of an opinion by the adroit questioning of the attorneys for the defense: *State v. Straub*, 16 Wash. 112, 47 Pac. 227.

A juror is subject to challenge for actual bias, when he has an impression as to the guilt of the accused which it would take evidence to remove, and when he does not feel able to accord accused the presumption of innocence until his guilt is proven: *State v. Moody*, 18 Wash. 165, 51 Pac. 356.

Where a juror discloses on his examination that he has an opinion as to the guilt or innocence of the defendant, which it would take evidence to remove, and it does not clearly appear that he could nevertheless accord the defendant a fair and impartial trial, he is subject to challenge for cause: *State v. Lattin*, 19 Wash. 57, 52 Pac. 314.

Although a juror may have an impression, going to the merits of the case on trial, based upon something he had previously heard or read, he is not disqualified thereby, if it appears from his examination that he can discharge his duty as a juror wholly unembarrassed by what he has heard or read concerning the case: *State v. Harras*, 22 Wash. 57, 60 Pac. 58.

Where a juror states on his voir dire that he has no opinion as to the guilt or innocence of accused, but that he has some slight impression on the subject from having heard the case discussed by persons who did not claim to know the facts, and that such impression would readily yield to testimony, he is not disqualified on the ground of actual bias: *State v. Royse*, 24 Wash. 440, 64 Pac. 742.

A juror is not chargeable with bias or implied bias when he states on his examination that he would require no greater evidence to convict a man of murder in the first degree where the penalty is death than he would where the penalty is imprisonment in the penitentiary: *State v. Boyce*, 24 Wash. 515, 64 Pac. 1117.

In a prosecution for murder, when the fact of killing was not denied, but the defense was based on drunkenness and insanity, a juror was not shown to be disqualified from the fact that he had read a newspaper account of the killing, but did not know who was charged; that he had no opinion as to the guilt or inno-

cence of the accused; that what he read was a mere matter of news and he did not know whether the newspaper account was true or not, but he believed from the account the person whose name was given in the paper was the person who killed deceased, and that it would take considerable evidence to change his mind: *Id.*

§ 4984. Implied bias defined.—The fact that the attorney for the prosecution trades with a juror, and that the latter has a high opinion of him as a man, and would go to him if he should become involved in litigation, but has never consulted him as an attorney, is not a disqualification of the juror: *State v. Boyce*, 24 Wash. 515, 64 Pac. 1117.

A client of an attorney for one of the parties, called as a juror, is not subject to challenge on the ground of implied bias, under Ballinger's Code, section 4984, which provides that a challenge for implied bias may be taken when the juror stands in the relation of attorney and client to the adverse party: *McCorkle v. Mallory*, 30 Wash. 633, 71 Pac. 186.

§ 4985. Challenge of juror for actual bias.—Where one whose name had been indorsed on an information as a witness for the state is drawn as a juror, he is incompetent to serve on the ground of bias, even though he disclaims any, when he has knowledge of material controverted facts in the case; and the action of the court in forcing the defendant to exhaust his last peremptory challenge against such juror is reversible error: *State v. Stentz*, 30 Wash. 134, 70 Pac. 241.

§ 4987. Peremptory challenge of jurors—How taken.—The waiver by the prosecution of the right to exercise a peremptory challenge would apply only to the jury in the box at the time, and would not preclude the prosecution from exercising the right of peremptory challenge upon talesmen called subsequently, where the number of challenges allowed the prosecution had not been exhausted, even if it resulted in giving the prosecution the last challenge: *State v. Vance*, 29 Wash. 437, 70 Pac. 34.

§ 4993. Order of Trial—Charging Jury.

When the jury has been sworn, the trial shall proceed in the following order:

(1) The plaintiff must briefly state the cause of action and the evidence by which he expects to sustain it. The defendant may in like manner state the defense and the evidence he expects to offer in support thereof, but nothing in the nature of comments or argument shall be allowed in opening the case. It shall be optional with the defendant whether he states his case before or after the close of the plaintiff's testimony.

(2) The plaintiff or the party upon whom rests the burden of proof in the whole action, must first produce his evidence; the adverse party will then produce his evidence.

(3) The parties will then be confined to rebutting evidence, unless the court for good reasons, in furtherance of justice, permits them to offer evidence in the original case.

(4) When the evidence is concluded, either party may request the judge to charge the jury in writing, in which event no other charge or instruction shall be given, except the same be contained in the said written charge; or either party may request instructions to the jury on points of law, and if the court refuse to give the same, the party requesting may except. Either party shall also be entitled to require of the judge that all interlocutory orders, instructions or rulings upon the evidence during the progress of the trial of a cause, shall be reduced to writing, together with any exceptions that may be made thereto and the same shall be made a part of the record of the case, and any refusal on the part of the judge trying the cause or making the order to comply with all or any of the provisions of this section shall be regarded error, and entitle the party whose request shall have been refused to a reversal of the judgment on a writ of error: Provided, always, That the instruction or ruling so requested is pertinent and consistent with the law and evidence of the case, and that such refusal has worked an injury to the party requesting the same: Provided, further, That whenever in the trial of any cause, a stenographic report of the evidence and the charge and instructions of the court is taken, the taking of such charge or instructions by the stenographic reporter, shall be considered as a charge or instruction in writing within the meaning of this section.

(5) After the conclusion of the evidence and the filing of request for charge in writing or instructions, the plaintiff or party having the burden of proof may, by himself or one counsel, address the court and jury upon the law and facts of the case, after which the adverse party may address the court and jury in like manner by himself and one counsel, or by two counsel, and be followed by the party or counsel of the party first addressing the court. No more than two speeches on behalf of the plaintiff or defendant shall be allowed.

(6) The court shall then charge the jury upon the law in the case. If no request has been made for said charge to be in writing, or if no instructions has been requested, said charge may be oral; but either party at any time before the jury return their verdict, may except to the same or any part thereof; but no exceptions shall be regarded by the supreme court, unless the same shall embody the specific parts of said charge to which exception is taken. In charging the jury the court shall state to them all matters of law necessary for the information of the jury in finding a verdict; and if it becomes necessary to allude to the evidence, it shall also inform the jury that they are the exclusive judges of all question of fact. [Amendment, approved Mar. 12, 1903; L. 1903, p. 119.]

§ 4993. Argument.—Where counsel for defendants waive argument on their part after the opening argument has been made for plaintiffs, it is not error for the court to refuse to allow further argument

on the part of plaintiffs: *Seattle etc. Ry. Co. v. Roeder*, 30 Wash. 245, 70 Pac. 498.

Charging jury—Matters of law only.—A remark by the court concerning a criminal action, that "it is mostly a case of

positive testimony," is not objectionable on the ground of being an expression of the court's opinion on the weight of the testimony. Error of the court in stating to the jury that it was not permissible to introduce evidence affecting the character of the defendant, that the court would not permit it, for instance, to be shown that he had committed another offense, is harmless, when the instructions were fair to the defendant otherwise and correctly stated the law, and it does not appear that prejudicial error resulted from the remark: *State v. Burns*, 19 Wash. 52, 52 Pac. 316.

A charge to the jury that murder in the first degree is the crime mentioned in the information in the case, and is where a person purposely and of his deliberate and premeditated malice kills another, is not erroneous on the ground that the language used assumes that the crime of murder in the first degree had been committed: *State v. Straub*, 16 Wash. 112, 47 Pac. 227.

Order of proceeding—Burden of proof. In an action to recover on a promissory note the amount due with interest and a stated attorney fee fixed by the contract of the parties, which was entered into prior to the act of 1895 authorizing the court to allow such fee as may be reasonable, a defendant who admits the allegations of the complaint and sets up an affirmative defense that he signed as surety and has been released by an extension granted the principal maker, is entitled to the opening and closing of the case, as there is no burden upon plaintiff to prove even a reasonable attorney's fee: *McDougall v. Walling*, 19 Wash. 80, 52 Pac. 530.

§ 4994. Nonsuit—Insufficiency of evidence.—Where the court has granted the motion of defendant to discharge the jury and for judgment in its favor, made in conformity with Laws 1895, page 64, section 1, which provides that in all cases in which the legal sufficiency of the evidence shall be challenged, and the court shall decide as a matter of law what verdict should be found, the court shall discharge the jury and direct judgment to be entered in accordance with its decision, a motion of plaintiff for a dismissal of his case without prejudice comes too late: *Dunkle v. Spokane Falls etc. Ry. Co.*, 20 Wash. 254, 55 Pac. 51.

Where defendant's liability, if any, arises through the acts of an agent, whose authority it denied, defendant is not entitled to a nonsuit if there is any testimony sufficient to go to the jury tending to establish the agency: *Morris v. Frye-Bruhn Co.*, 20 Wash. 257, 55 Pac. 50.

A challenge to the legal sufficiency of the evidence will not effect a removal of a cause from the consideration of the jury, where, in the opinion of the court,

there are disputed questions of fact for the jury to pass upon: *Rinear v. Kinner*, 20 Wash. 541, 56 Pac. 24.

§ 4999. Separation of jury.—The jury in a criminal case may, at any time before the submission of the cause to them, be allowed to separate, under the authority of Code of Procedure, section 359 (Bal. Code, § 4999): *State v. Johnny Tommy*, 19 Wash. 270, 53 Pac. 157.

§ 5004. Evidence taken to juryroom.—Exhibits properly introduced in evidence and explanatory of the evidence of witnesses may be taken to the juryroom: *State v. Webster*, 21 Wash. 64, 57 Pac. 361.

Where a warrant of arrest had been admitted in evidence without objection, except to the purported return indorsed on the back thereof, which was ruled out, it was not error to permit the warrant itself to be taken to the juryroom, although containing the return on its back which was not in evidence, since the defendant waived all objections by permitting the introduction of the warrant in evidence without asking for the obliteration or concealment of the indorsement: *State v. Yourex*, 30 Wash. 611, 71 Pac. 203.

§ 5006. Criminal law—Jeopardy—Jury, discharge of, when unable to agree.—A plea of once in jeopardy cannot be based upon the discharge of the jury on a former trial, when they had been out for nineteen hours, had stood one way for twelve hours, and reported, when called into court, that there seemed no prospect of their being able to reach an agreement, since Ballinger's Code, section 5006, authorizes the discharge of a jury, "after they have been kept together until it satisfactorily appears that there is no probability of their agreeing": *State v. Costello*, 29 Wash. 366, 69 Pac. 1099.

§ 5020. Replevin—Verdict in action of. In an action for the recovery of specific personal property, a verdict of the jury that they find for the plaintiff that she is the owner of the property mentioned in the complaint, and that the value of said property is the sum of \$330, is equivalent to the requirements of Ballinger's Code, section 5020: *Hall v. Law Guarantee etc. Soc.*, 22 Wash. 306, 79 Am. St. Rep. 935, 60 Pac. 643.

§ 5021. Verdict—Special findings.—The question of the submission to the jury of special interrogatories is addressed to the discretion of the trial court, and is not reviewable on appeal: *Bailey v. Tacoma Traction Co.*, 16 Wash. 48, 47 Pac. 241.

See *Dixon v. Bausman*, 17 Wash. 304, 49 Pac. 540; note to section 5071.

The submission to the jury of special interrogatories is, under Code of Procedure, section 375, a matter entirely in the discretion of the trial court, and a re-

fusal to submit cannot be regarded as error: *Walker v. McNeill*, 17 Wash. 583, 50 Pac. 418.

Where special interrogatories were submitted to the jury and a general verdict returned by them without returning the special verdict asked, and the court directed the jury to answer such interrogatories, which the foreman thereupon did in writing, in the presence of court, jury, and parties, without signing same, and no objection was raised at the time to the regularity of such proceedings, the appellants must be held to have waived the irregularity: *Mounts v. Goranson*, 29 Wash. 262, 69 Pac. 740.

§ 5022. Verdict, general and special.—Where plaintiff's right to have premises vacated by a tenant prior to the expiration of the lease is conditioned upon a sale of the premises and thirty days' written notice to the tenant to remove therefrom, a special verdict by the jury that plaintiff was entitled to possession of the premises on a certain date, is not immaterial and a mere conclusion of law, when the notice to the tenant required him to surrender possession "within thirty days from date, or as soon thereafter as you have completed the harvesting of your crop," and the jury, in answer to another interrogatory, have found that the tenant finished harvesting his crop on the day prior to the one on which they find plain-

tiff's right of possession to accrue: *Mitchell v. Matheson*, 23 Wash. 724, 63 Pac. 564.

Where a complaint, in addition to containing sufficient facts to state a cause of action, includes in its allegations immaterial statements, which amount to nothing more than the pleader's conclusion from the facts stated, a special verdict finding against him on such immaterial allegations cannot be held as inconsistent with a general verdict in his favor: *Mercier v. Travelers' Ins. Co.*, 24 Wash. 147, 64 Pac. 158.

Where the special verdict of the jury fixes the various items of plaintiff's damages, both general and special, with the exception of one item of special damages alleged in the complaint, and the aggregate of the various items found in the special verdict, plus the amount of the item alleged in the complaint but omitted from the special verdict, is less than the general verdict, the general verdict must yield to the special, with the addition thereto of the omitted item: *Engstrom v. Merriam*, 25 Wash. 73, 64 Pac. 914.

Where a special verdict is susceptible of two constructions, one of which will support the general verdict and the other will not, such construction should be given as will support the general verdict: *McCorkle v. Mallory*, 30 Wash. 633, 71 Pac. 186.

§ 5028. Waiver of Jury—Fees Must be Advanced by Party Desiring Jury Trial or Waiver Presumed.

In all civil actions triable by a jury in the superior court any party to the action may, at or prior to the time the case is called to be set for trial, serve upon the opposite party or his attorney, and file with the clerk of the court a statement of himself, or attorney, that he elects to have such case tried by jury. At the time of filing such statement such party shall also deposit with the clerk of the court \$12.00. Unless such statement is filed and such deposit made, the parties will be deemed to have waived trial by jury, and consented to a trial by the court.

The amount deposited by the party demanding a trial by jury shall be a part of the taxable costs in such action. The amounts received by the clerk on account of jury fees shall be accounted for as such other fees received.

Section 5028, Ballinger's Code, and all other acts in conflict with this act, are hereby repealed. [Amendment, approved Mar. 6, 1903; L. 1903, p. 50.]

§ 5029. Trial by court—Findings of fact and conclusions of law, how made—Findings, not necessary, when.—Where a hearing is had upon the final account of an administrator and the exceptions thereto, no formal findings of fact are necessary, but the order of the court sustaining certain of the exceptions and disallowing others is sufficient to present the questions raised: *Horton v. Barto*, 17 Wash. 675, 50 Pac. 587.

Special findings of fact by the court are unnecessary, when its decree is one dismissing the action: *Noyes v. King County*, 18 Wash. 417, 51 Pac. 1052.

The court's refusal to make findings of fact based upon matters not disputed in the pleadings cannot be urged as error: *Peterson v. Johnson*, 20 Wash. 497, 55 Pac. 932.

The failure of the court to file findings of fact and conclusions of law in cases tried without a jury, as required by Ballinger's Code, section 5029, is not ground for reversal, when no request for such findings, nor objection to the judgment for lack thereof, appears in the record: *Wilson v. Aberdeen*, 25 Wash. 615, 66 Pac. 95.

The action of the court in rendering judgment in a cause tried by it, without making findings of fact or conclusions of law, cannot be urged as error on appeal, when the record does not disclose any request therefor, or that the matter was called to the court's attention prior to the rendition of judgment: *Walsh v. Bushell*, 26 Wash. 576, 67 Pac. 216.

Although an action may have been brought as a law action and a question of fact proper for a jury raised by a general denial in the answer, yet where an equitable defense was interposed and the action was tried by the court as an equitable one, findings of fact, as prescribed by Ballinger's Code, section 5029, were unnecessary, as the statute has application only to actions at law tried by the court without a jury: *Knowles v. Rogers*, 27 Wash. 211, 67 Pac. 592.

An objection that the findings of the court are not in proper form, because being combined with the conclusions of law and judgment in one statement, instead of being separately stated as required by the statute, must be deemed waived when not excepted to on that specific ground: *Ach v. Carter*, 21 Wash. 140, 57 Pac. 344.

It is sufficient, where the findings and conclusions are placed under one cover, if they are separately and specifically set forth under their appropriate headings: *Shephard v. Gove*, 26 Wash. 452, 67 Pac. 256.

The statute requiring the court to file findings of fact is inapplicable to actions of equitable cognizance: *White Crest Canning Co. v. Sims*, 30 Wash. 374, 70 Pac. 1003.

In an action to enjoin the collection of taxes, where an issue has been raised that the assessor acted arbitrarily and fraudulently in assessing real property, a conclusion of law that the valuation of the premises was fair and just will be treated as a finding of fact, in the absence of a finding on that issue: *Coolidge v. Pierce County*, 28 Wash. 95, 68 Pac. 391.

§ 5030. Findings by court.—See note to section 6520 in *Gerhard v. Worrall*, 20 Wash. 492, 55 Pac. 625, as to effect of findings on appeal.

§ 5051. Exceptions—When to be taken, how.—The failure to except to the findings of fact and conclusions of law made by the court in a proceeding tried before it exclusively upon affidavits will exclude

consideration of the affidavits by the supreme court on appeal and confine the review by that court to the question of whether the findings of fact warrant the conclusions of law: *Carstens v. Leidigh*, 18 Wash. 450, 63 Am. St. Rep. 906, 51 Pac. 1051.

§ 5052. Manner of taking in court cases.—Under Laws 1893, page 112, section 3, the prevailing party has a right to present his decree to the court for signature without giving the other party notice of the time and place of signing the same: *Brooks v. James*, 16 Wash. 335, 47 Pac. 751.

Under Laws 1893, page 112, section 3, providing that exceptions to findings of fact or conclusions of law must be taken within five days after the filing of the decision or within five days after service of a copy of such decision or of written notice of its filing, the party objecting must file exceptions within five days after acquiring knowledge in any way of the existence of the decree, as actual knowledge is equivalent to written notice: *Fisher v. Kirschberg*, 17 Wash. 290, 49 Pac. 488.

An exception to findings of fact, specifying them by number, is a sufficient compliance with the statutory requirement that a party excepting must specify the part or parts excepted to; and the fact that the party excepting used the word "objection" instead of "exception," is immaterial, when the context makes it evident that he was urging an exception to the findings: *Rarahan v. Gibbons*, 23 Wash. 255, 62 Pac. 773.

Where exceptions to findings of fact and conclusions of law were duly made in open court and taken down by the court stenographer, but through oversight were not filed or noted on the margin or at the foot of the decision by the judge, as required by Ballinger's Code, section 5052, it is within the power of the court, by nunc pro tunc order, to direct their filing and attaching to the findings as of the date of the findings: *Id.*

An exception to findings of fact, specifying them by number, is a sufficient compliance with the statutory requirements that a party excepting must specify the part or parts excepted to: *Young v. Borzone*, 26 Wash. 4, 66 Pac. 421.

Exceptions to findings of fact and conclusions of law by reference thereto by number are sufficient: *Burrows v. Kinslev*, 27 Wash. 694, 68 Pac. 332.

The fact that findings of fact and conclusions of law were signed by the court on one day and exceptions thereto noted on the day following would not invalidate such exceptions, where the decision was not signed by the judge until the day following his signature to the findings

and conclusions, and there is nothing in the record showing that the exceptions were not stated to the judge and allowed before the decision became a matter of record: *Id.*

The action of the trial court in entering judgment immediately upon filing its findings of fact and conclusions of law, though filed in the absence of, and without notice to, the losing party, would not constitute reversible error: *Kinkade v. Witherop*, 29 Wash. 11, 69 Pac. 399.

When necessary.—In the absence of exceptions to the findings of fact by the trial judge, the supreme court will not review the action of the lower court in admitting testimony over the objection of appellant: *Schlotfeldt v. Bull*, 18 Wash. 64, 50 Pac. 590.

The supreme court will not review the evidence in a case upon a general exception to all the findings of fact by the lower court, unless it appears that all the findings of fact are manifestly erroneous: *Washington Liquor Co. v. N. W. Livestock Co.*, 18 Wash. 71, 50 Pac. 569.

§ 5053. Exceptions in jury cases.—An exception taken after the close of the trial will not be considered on appeal, where no extension of time in which to take exceptions had been asked, and where it appears from the record that it was practicable to have taken the exceptions between the time of the jury's retirement and of the rendition of their verdict: *State v. Vance*, 29 Wash. 438, 70 Pac. 34.

Exceptions to the giving and the refusing of instructions will not be considered on appeal, where they were not taken until after verdict: *Sterrett v. Mining Co.*, 30 Wash. 164, 70 Pac. 266.

§ 5055. Manner of taking and entering exceptions.—The assignment of the decree of the court as error is sufficient, when there are no special findings of fact separately from the decree, and the validity of the decree is the single question raised in the brief: *Goetzinger v. Rosenfeld*, 16 Wash. 392, 47 Pac. 882.

§ 5056. Exceptions on appeal—Review of.—Where an appeal is from an error of the court in refusing to admit testimony and such refusal is duly excepted to at the time, it is not necessary for the appellant, in order to procure a review of such error, to except also to the findings of fact: *Schlotfeldt v. Bull*, 17 Wash. 6, 48 Pac. 343.

§ 5058. Bill of exceptions—Notice to settle—Amendments.—The voluntary appearance of a respondent with a motion to strike a proposed statement of facts is a waiver of notice of its filing. Notice to respondent of the settlement and certification of a statement of facts is unnecessary, when there are no objections or amendments to the proposed statement as

filed by appellant, the fact of the respondent having made a motion to strike the statement, which had been overruled by the lower court, not constituting the character of objection contemplated by the law on appeals: *Hansen v. Nilson*, 17 Wash. 606, 50 Pac. 511.

Notice of the settlement of a statement of facts is unnecessary, when the statement has been regularly filed and served upon the respondent, and no amendments proposed by the latter within the time limited by law. Where the review of but a single question is sought by an appeal, and all the evidence bearing on that question is brought into the record and certified as all the evidence bearing thereon, it is unnecessary for the appellant to present a statement certified as containing all the material facts, matters and proceedings in the cause; notice unnecessary: *Bruce v. Foley*, 18 Wash. 96, 50 Pac. 935.

Under the statute requiring notice of application for settlement of a statement of facts to be served not less than three days before time of hearing, notice given on the ninth of the month of settlement, to be had on the twelfth, satisfies the statutory requirement: *Martin v. Sunset Telephone etc. Co.*, 18 Wash. 260, 51 Pac. 376.

Where a statement of facts as filed, served and settled, contained an exception to an erroneous instruction, and it was a disputed question as to whether the exception had been taken, the action of the court in granting a motion several months after settlement to strike the exception was unwarranted, when there was no showing of fraud respecting the insertion of the exception: *Anderson v. N. P. Ry. Co.*, 19 Wash. 340, 53 Pac. 345.

Where a notice to respondent that appellant will apply to the judge to settle and certify a statement of facts fails to designate the place where the settlement and certification are to be had, the notice is insufficient, under Laws 1893, page 114, section 9, which requires the time and place to be specified in such notices: *Kroenert v. Gustason*, 19 Wash. 373, 53 Pac. 340.

Notice of filing bill of exceptions.—Where a statement of facts was not filed within the thirty days required by statute, it should be stricken upon respondent's motion therefor, even though an extension of time had been granted by the trial court, when it appears that the order was made without notice to the adverse party and in the absence of a stipulation for an extension of time: *Wollin v. Smith*, 27 Wash. 399, 67 Pac. 561.

§ 5059. Exhibits—Affidavits, etc., how embodied in.—In preparing a proposed statement of facts for settlement, a refer-

ence to exhibits introduced in evidence and in the clerk's possession is sufficient without incorporating copies thereof in the proposed statement, and their attachment to the statement by the clerk under order of the court, together with the judge's certificate as to their correctness, suffices to properly incorporate them in the statement settled: *Pennsylvania Mfg. Inv. Co. v. Gilbert*, 18 Wash. 667, 52 Pac. 246.

Affidavits introduced in evidence at the hearing of a cause in the court below should be brought into the record on appeal by inclusion in a statement of facts: *Heffner v. Board County Commrs.*, 16 Wash. 273, 47 Pac. 430.

§ 5060. Statement of facts—Certification of—How signed.—A supplemental certificate by the trial judge that the court had no other affidavits before it than the one of record cannot be given the force of a finding of fact: *Christofferson v. Pfennig*, 16 Wash. 491, 48 Pac. 264.

Sufficiency of.—Whether or not a statement of facts is properly certified is an immaterial matter, when the findings of fact and conclusions of law are sufficiently full to give the appellate court an understanding of the merits of the case: *State of Washington ex rel. v. Fawcett*, 17 Wash. 188, 49 Pac. 346.

§ 5061. Settlement of, on change or death of judge.—The settlement and certifying of a statement of facts by the court is a judicial act, which can be exercised only by one vested with judicial power; hence, the act of March 8, 1893 (Bal. Code, § 5061), which authorizes and requires a judge whose term of office has expired to settle statements of facts in actions previously tried before him, is invalid and unconstitutional, as attempting to impose judicial functions on one whose judicial powers, as prescribed under the constitution, have terminated with the expiration of his term of office: *Hallam v. Tillinghast*, 19 Wash. 20, 52 Pac. 329.

The settlement of a statement of facts by a judge after his term of office has expired is not ground for striking the statement, when it has also been certified by the successor of the judge who tried the cause: *Rauh v. Scholl*, 19 Wash. 30, 52 Pac. 332.

§ 5062. When to be filed—Effect of irregularity.—Where an appellant desires an extension of time in which to file a proposed statement of facts in an appeal from a judgment rendered by a visiting judge, he is not restricted to an application to the visiting judge for such extension, but is entitled to have his application passed upon by the judge of the court of the place of trial: *State v. Benson*, 21 Wash. 365, 58 Pac. 217.

Under Ballinger's Code, section 5062, where there are several judges presiding

over the superior court of a county, any one of such judges may enter an order extending the time for filing a statement of facts, although the cause was tried before another judge of that court: *Wallace v. Oceanic Packing Co.*, 25 Wash. 143, 64 Pac. 938.

The time prescribed by Ballinger's Code, section 5062, within which a statement of facts on appeal must be filed is a mandatory provision, going to the substance of the appeal, and is not a matter in which amendment or extension of time is permitted under Laws 1899, page 79: *State v. Seaton*, 26 Wash. 305, 66 Pac. 397.

A statement of facts will be stricken on appeal where it was not served within thirty days after the entry of judgment, and no extension of time had been granted appellant therefor: *State v. Landes*, 26 Wash. 325, 67 Pac. 72.

A statement of facts filed after the expiration of the statutory limit provided by Ballinger's Code, section 5062, will be stricken from the files on the motion of respondent: *Zindorf Construction Co. v. Western Am. Co.*, 27 Wash. 31, 67 Pac. 374.

An application for an extension of time within which to file a statement of facts must not only be filed, but acted upon by the court, within the sixty days next following the thirty days after the right to appeal accrues: *Crowley v. McDonough*, 30 Wash. 57, 70 Pac. 261.

The superior court has no power, after the expiration of the time limited by statute for the filing of a statement of facts, to order the filing of such statement as of a previous date, where the application for further time was not considered by the court during the time prescribed by law for such filing: *Id.*

After the expiration of the original thirty days provided by statute, a statement of facts can be filed only by permission of the court, and hence the filing of a statement thereof, but within the sixty days additional permitted by statute, without leave or order of court, would not create or preserve any rights in favor of appellants, or entitle them to any of the benefits accruing from a timely filing of such statement: *Id.*

§ 5071. New trial—Insufficiency of evidence.—Where the verdict of a jury in an action to recover the purchase price on a sale of goods is against defendant in such a sum as not to conform to the facts under either the plaintiff's or the defendant's theory of the case, the defendant is entitled to a new trial on motion therefor: *Tilden v. Gordon & Co.*, 25 Wash. 593, 66 Pac. 50.

Where a litigant prepares his evidence in view of an existing decision of the supreme court, which is overruled subsequent to the trial of his action, he is en-

titled to a new trial on the ground of surprise, where the change announced in the law would have a material bearing upon his remedial rights: *Allen v. Chambers*, 18 Wash. 341, 51 Pac. 478.

Terms.—Where a new trial is granted plaintiff, because of error of the court in ruling that his complaint does not state a cause of action, the plaintiff is entitled to the new trial unconditionally, and it is error to impose terms that his motion will be granted on condition of his filing a waiver of costs to date: *Casey v. Malidore*, 19 Wash. 279, 53 Pac. 60.

Where the trial judge is not satisfied with the verdict, and is of the opinion that it is not supported by the evidence or is against the weight of evidence, it is his duty to set it aside, even though there may be some conflict in the testimony: *Tacoma v. Light and Water Co.*, 16 Wash. 289, 47 Pac. 738.

A defendant cannot urge the objection that there was no evidence to support the verdict against him, after he has propounded interrogatories to the jury upon points necessary to be established to sustain a judgment against him, and the findings of the jury thereon are adverse to defendant: *Dixon v. Bausman*, 17 Wash. 304, 49 Pac. 540.

The action of the trial court in denying an application for a new trial, on the ground that the evidence was insufficient to support the verdict, will not be reviewed in the absence of the evidence upon which the ruling was based: *Pincus v. Brewing Co.*, 18 Wash. 108, 50 Pac. 930.

Surprise.—A case of surprise, sufficient to warrant a new trial, because the evidence at the trial did not correspond to that on the preliminary examination before a justice of the peace, is not established, when it appears that the witnesses before the justice, the justice himself and one of defendant's counsel, who was present at the preliminary examination, were all present at the trial: *State v. Webb*, 20 Wash. 500, 55 Pac. 935.

In an action by a trustee in bankruptcy to recover possession or the value of certain promissory notes held by defendant and alleged to be the property of the bankrupt, the defendant answered that it had received the notes from one Fleming for collection. In his reply plaintiff set up that said Fleming's title was without consideration and for the purpose of defrauding the creditors of the bankrupt. The deposition of Fleming, taken in Canada, gave his residence as "Pittsburg, Massachusetts." Before trial plaintiff submitted written interrogatories to defendant asking for the place of residence and postoffice address of said Fleming, to which defendant answered that it did not know. More than a year before trial de-

fendant's attorneys had received an affidavit showing Fleming's true residence, but had mislaid it and could not find it until the day after the trial. On the trial plaintiff proved there was no such place as Pittsburg, Massachusetts, and upon argument suggested that the postoffice address and place of residence were being concealed in order to prevent plaintiff from procuring testimony in support of the issue of fraud. The jury found for plaintiff. Held, that it was error to grant defendant a new trial on the ground of accident and surprise and newly discovered evidence, since it must have been apparent from plaintiff's written interrogatories to defendant, that the matter of residence must have been regarded by plaintiff as material for some reason, and was sufficient notice to put it on inquiry to inform itself, though not put in issue by the pleadings: *Reeder v. Traders' Nat. Bank*, 28 Wash. 139, 68 Pac. 461.

An order granting a new trial, although a matter resting largely in the sound discretion of the trial court, is reviewable on appeal; and its reversal is authorized when it is granted on the ground of accident or surprise, and it appears that the surprise was due to neglect or inattention on the part of the party surprised, and that he had not used all reasonable efforts to overcome the evidence which worked the surprise: *Id.*

The granting of a new trial on the ground of accident and surprise is an abuse of the discretion reposed in trial courts in such matters, where it appears that plaintiff depended upon record testimony to prove a material issue in the case and waited until ten minutes before the testimony was required in the trial, before making demand upon the custodian of the records to produce it, when it was discovered that the record desired was missing and could not be found: *Pincus v. Puget Sound Brewing Co.*, 18 Wash. 108, 50 Pac. 930.

Misconduct of jury.—The court is warranted in denying a new trial on the ground of the misconduct of the jury when the showing of misconduct is contradicted by the members of the jury: *State v. Webb*, 20 Wash. 500, 55 Pac. 935.

Drunkenness of a juror during the progress of a trial, even if he were sober when the testimony was introduced and at the time of rendering verdict, is such misconduct as to warrant a reversal of the case: *Hedican v. Fire Ins. Co.*, 21 Wash. 488, 58 Pac. 574.

The refusal of the court to grant a new trial on the ground that a juror had testified falsely on his voir dire as to having formed an opinion of guilt previous to the trial, cannot be regarded as an abuse of discretion merely from the fact that

two persons make affidavit thereto in opposition to the affidavit of the juror alone: *State v. Hall*, 24 Wash. 255, 64 Pac. 153.

A motion for new trial on the ground of the misconduct of the jury was properly denied where it was based upon the affidavit of one of the jurors that the jury reached its verdict by a certain method of calculation, even though he did not join therein, since such alleged misconduct inheres directly in the verdict itself, and one of the jurors cannot be heard to impeach the jury's verdict: *Marvin v. Yates*, 26 Wash. 51, 66 Pac. 131.

Newly discovered evidence.—The denial of a new trial to defendant on the ground of newly discovered evidence does not constitute an abuse of discretion, when the newly discovered evidence consisted of statements made by plaintiff's husband differing from her own testimony, given in a deposition by him, which was taken on notice, and published during the trial without the knowledge of defendant, when the court gives full effect to any inferences deducible from the deposition in overruling the motion for new trial on condition that plaintiffs remit a portion of their verdict: *Tyler v. North American Trading etc. Co.*, 24 Wash. 252, 64 Pac. 162.

The refusal of the court to grant a new trial on the ground of newly discovered evidence was not error, where it appears that the evidence could, by the exercise of reasonable diligence, have been produced upon the original trial: *State v. Vance*, 29 Wash. 438, 70 Pac. 34.

New trial on the ground of newly discovered evidence was properly denied, where it appears that before trial defendant had procured the names of the new witnesses upon written interrogatories propounded to plaintiff several months before trial, but through a want of diligence had failed to obtain their addresses as well: *Bullock v. Steamship Co.*, 30 Wash. 449, 70 Pac. 1106.

Refusal of an extension of time for filing affidavits in support of a motion for a new trial would not be error, where it appears that the affidavits would not establish a ground for a new trial: *Id.*

Abuse of discretion.—Where fraud is charged in the sale of property by the executors of an estate, and inadequacy of consideration is relied upon to raise the presumption of fraud, and the only substantial conflict in the evidence is expert testimony as to the value of the property, and the court has no doubt as to the evidence and the correctness of its decision thereon, and, in granting a new trial, assigns no legal ground therefor, but declares that, if called upon to again render judgment on the same evidence, it would render the same judgment, its ac-

tion constitutes an abuse of discretion: *Sharp v. Greene*, 22 Wash. 677, 62 Pac. 147.

The action of the trial court in granting a new trial cannot be considered as an abuse of discretion, when there was a substantial conflict in the testimony, and there was nothing in the record disclosing that the new trial was granted because of a misconception of the law applicable to the case: *Latimer v. Black*, 24 Wash. 231, 64 Pac. 176.

The action of the trial court in granting a new trial upon the refusal of plaintiff to comply with a condition made by the court requiring him to remit a portion of his verdict is not an abuse of discretion, where the evidence is conflicting: *Hughes v. Horton*, 26 Wash. 110, 66 Pac. 109.

The refusal of a new trial on the ground of newly discovered evidence in the shape of witnesses who had lived in the same house with plaintiff and knew her condition, was not an abuse of the court's discretion, where the case had been pending a couple of years before the trial, had been tried once before about a year prior to the second trial, and no effort had been made during all that time to procure the testimony of such witnesses: *Jordan v. Seattle*, 30 Wash. 298, 70 Pac. 54.

The action of the trial court in granting defendant's motion for a new trial, based upon substantially the same facts upon which it had denied their motions against setting the cause for trial and for a continuance because they were not prepared for trial, being a matter within the court's discretion, will not be reviewed, where there is no showing of abuse: *Bracka v. Fish*, 28 Wash. 410, 68 Pac. 872.

The action of the lower court in granting a new trial will not be reviewed on appeal, unless there appears to be an abuse of the discretion vested in the lower court in such matters: *McBroom & Wilson Co. v. Gandy*, 18 Wash. 79, 50 Pac. 572.

Allowance on one of several grounds.—Although a motion for a new trial may have presented several grounds therefor, yet where the court distinctly confines its ruling to but one of the grounds named, and that a question of law, the supreme court will not on appeal, on overruling the motion upon the ground sustained by the lower court, look into other grounds assigned to ascertain whether the motion should have been sustained upon any of them: *Gray v. Washington Water Power Co.*, 27 Wash. 714, 68 Pac. 360.

Renewal of motion for.—The party filing a motion for a new trial is not entitled to notice of the time of hearing the motion, and after the denial of a motion for a new trial neither the judge making

the order nor his successor has jurisdiction to again consider a like motion, based upon the same grounds and the same facts, and make another order in the case: *Burnham v. Spokane Mercantile Co.*, 18 Wash. 207, 51 Pac. 363.

Excessive damage by passion and prejudice.—In an action to recover damages against a navigation company for breach of a contract of carriage, and for injuries arising from the negligent and wrongful and forcible landing by defendant of an aged woman at a wrong destination, and the carelessness of defendant's agents in the manner of putting her off upon a barren island, exposed to the inclemency of stormy weather, from which they failed to rescue her, but allowed her to make her way home as best she could, which she did after two days' travel, incurring sickness and great bodily discomfort from her exposure, a verdict for \$600 does not indicate passion or prejudice on the part of the jury: *Sievers v. Dalles etc. Nav. Co.*, 24 Wash. 302, 64 Pac. 539.

§ 5075. Notice of motion for.—A motion for a new trial, designating the grounds therefor, filed and served upon the adverse party within two days after the rendition of a verdict, is sufficient notice of a motion for a new trial as required by Code of Procedure, section 404: *Boarman v. Hinckley*, 17 Wash. 126, 49 Pac. 226.

Where it appears from the record that a motion for a new trial was filed and notice of the motion served upon the same day, and there is nothing to show that the service preceded the filing, the service must be deemed sufficient: *McBroom & Wilson Co. v. Gandy*, 18 Wash. 79, 50 Pac. 572.

Laws 1897, page 13, which requires a motion for a new trial to be filed within two days after verdict rendered does not repeal by implication, so far as motions for new trial are concerned, Laws 1893, page 414, section 24, and consequently the action of the court on the day following the rendition of a verdict, in granting an extension of twelve days' time in which to file a motion for a new trial, was not erroneous: *Leavenworth v. Billings*, 26 Wash. 1, 66 Pac. 107.

§ 5080. Of judgment—Presumption of validity on collateral attack.—The presumption as to the validity of a judgment cannot be overthrown on collateral attack on the ground that the face of the record shows that the cause of action might have been barred by the statute of limitations: *Christofferson v. Pfennig*, 16 Wash. 491, 48 Pac. 264.

§ 5085. Nonsuit—Insufficiency of evidence.—Where there is any evidence tending to support plaintiff's case, the defendant is not entitled to a nonsuit: *Swadling v. Barneson*, 21 Wash. 699, 59 Pac. 506.

The action of the court in directing judgment in defendant's favor in an action to recover damages for malicious prosecution is erroneous, when there is evidence tending to show that defendant had intrusted a mare to plaintiff under an agreement which entitled the plaintiff to retain possession until the fall of the year; that defendant had plaintiff arrested in July on a charge of grand larceny, and that defendant had informed a witness, prior to making the charge, that he was about to have plaintiff arrested for stealing his mare: *Richardson v. Spangle*, 22 Wash. 14, 60 Pac. 64.

There can be no nonsuit in a criminal case as in a civil case. The proper practice is to ask the court to direct an acquittal: *State v. Hyde*, 22 Wash. 551, 61 Pac. 719.

Refusal to grant a nonsuit is not error, when there is evidence, though conflicting, sufficient under the allegations of the complaint to sustain the verdict: *Sievers v. Dalles etc. Nav. Co.*, 24 Wash. 302, 64 Pac. 539.

Refusal of the court to grant a nonsuit before verdict or a new trial after verdict is not error, when there was sufficient evidence to justify the trial court in submitting the case to the jury, and when there was evidence, though conflicting, sufficient to support the verdict rendered: *Wulf v. Sullivan*, 24 Wash. 306, 64 Pac. 535.

In an action to recover for injuries resulting from being run down by a cable car, where there is some evidence that no gong was rung, it was error to nonsuit plaintiff, since it became the duty of the jury to determine what the fact was as to sounding the gong, and whether a failure to sound it constituted negligence under all the facts of the case: *Burian v. Seattle Elec. Co.*, 26 Wash. 606, 67 Pac. 214.

In an action for the death of a conductor of a logging train, caused by the derailling of the train, refusal of a nonsuit was proper, where the evidence showed that the train was loaded as usual, was traveling at the usual rate of speed, and that the track was not out of order; that the flanges on some of the car wheels were too thin to be safe, had flaws in them, and that they broke at the time of the accident; that such condition of the flanges make a car unsafe and dangerous, especially when striking a curve; that a reasonable and ordinary inspection would have discovered the defect, and that the derailling of the cars occurred while the train was rounding a curve: *Roberts v. Mill Co.*, 30 Wash. 25, 70 Pac. 111.

In an action against a guarantor upon a certificate of deposit, the defendant is not entitled to a nonsuit on the ground of want of consideration, when the cer-

tificate showed an extension of time of payment written across its face and when defendant's guaranty, which was indorsed on the back, but undated, recited that it was made for a valuable consideration, and when there was evidence of defendant's consent to the extension of time, although the proof upon the issue as to whether the guaranty or the extension was the prior act of the parties or whether they were in fact one transaction, was conflicting: *Rattlemiller v. Stone*, 28 Wash. 104, 68 Pac. 168.

The question of the negligence of defendant's driver was properly submitted to the jury, where there was evidence that he attempted to drive his team between a street-car and plaintiffs' horse and wagon, in a space which was too narrow, for the purpose of passing, and that just before attempting to drive through such narrow place he whipped up his horses and was going at a lively rate: *Woolf v. Hemrich Co.*, 28 Wash. 188, 68 Pac. 440.

In an action to recover damages for malpractice, the granting of a nonsuit was erroneous, although a physician called by plaintiff had testified that his condition after treatment might have been the natural result from the character of his injury, when it appears that a second operation had been necessary, that the surgeon employed to assist therein pursued different treatment from that adopted by the surgeon in charge, and that another surgeon had testified that the treatment employed in the first instance was not the usual method in such cases. The necessity for a second operation of itself afforded some evidence that plaintiff had been subjected to unnecessary danger, delay in recovery, pain and suffering, and thus afforded a question for the jury to pass upon: *Sawdey v. S. F. & N. Ry. Co.*, 30 Wash. 350, 70 Pac. 972.

The corporate existence of plaintiff is established sufficiently as against a motion for nonsuit where there is testimony of a witness, unobjected to and uncontradicted, that he is president of a corporation, the plaintiff in the case, and that the plaintiff company, a corporation, was the owner of the premises in controversy: *Stanford Land Co. v. Steidle*, 28 Wash. 72, 68 Pac. 178.

A motion for nonsuit on the ground that the complaint failed to state a cause of action was properly denied, where there was no demurrer and the defect had been cured by the admission of proof without objection: *State ex rel. Jenkins v. Indemnity Assn.*, 18 Wash. 514, 52 Pac. 234.

Where there is any contradiction in the evidence, it is the province of the jury to determine the facts, and, under such circumstances, a nonsuit should be refused: *Latimer v. Baker*, 25 Wash. 192, 64 Pac. 899.

Res judicata—Judgment of dismissal.—A judgment of dismissal of an action without prejudice would not have the effect of res judicata on the merits of the controversy even if the court erred in refusing to give judgment on the merits: *Bates v. Drake*, 28 Wash. 447, 68 Pac. 961.

Where plaintiff has been nonsuited in an action against defendants brought on the theory that the latter was liable as an employer, he is estopped from bringing a subsequent action against the same defendant on the theory that he was liable as a guarantor, when plaintiff in the first action expressly admitted that defendant could not be liable in the latter capacity: *Russell v. Blair*, 18 Wash. 339, 51 Pac. 477.

When motion of plaintiff for, too late. A motion by plaintiff to dismiss his complaint at his own costs comes too late, when not made until the court has filed a written opinion announcing his findings and conclusions and directing the entry of a decree in accordance therewith: *Herrick v. Nieszcz*, 16 Wash. 74, 47 Pac. 414.

Voluntary.—Under the code procedure, whether the action be of legal or equitable cognizance, the plaintiff has no right to dismiss his action, when a counterclaim has been set up and affirmative relief demanded by the defendant (*Waite v. Wingate*, 4 Wash. 324, 30 Pac. 81, overruled as to this point): *Washington Nat. Bldg. etc. Assn. v. Saunders*, 24 Wash. 321, 64 Pac. 546.

Where a judgment has been vacated and the case re-established, it is within the power of the court to dismiss the action on plaintiff's motion, without notice to defendants, where the latter are not claiming any affirmative relief: *Dane v. Daniel*, 28 Wash. 156, 68 Pac. 446.

§ 5090. For want of answer.—Where judgment is given against defendant for failure to answer, after the overruling of his demurrer to the complaint, the court is authorized, under Code of Procedure, section 412 (Bal. Code, § 5090), in proceeding to take evidence upon the allegations of the complaint: *Cross v. Johnson*, 20 Wash. 124, 54 Pac. 1000.

Where defendant refuses to answer after the overruling of its demurrer to the complaint in an action for relief against excessive taxation, the court is justified in entering judgment upon the pleadings without the taking of testimony, under Ballinger's Code, section 5090, which authorizes judgment for failure to answer and requires proof of any fact, only in cases where it is necessary to enable the court to give judgment, or to carry the judgment into effect: *Citizens' Nat. Bank v. Columbia Co.*, 23 Wash. 441, 63 Pac. 209.

Upon a judgment by default, without the introduction of proof, plaintiff is entitled merely to nominal damages instead of the amount prayed for in his complaint: *Ferguson v. Hoshi*, 25 Wash. 664, 66 Pac. 105.

Dismissal.—A judgment dismissing an action is warranted, when plaintiff has failed to comply with an order of the court requiring him to give security for costs on the ground of nonresidence: *Carlson v. Van De Vanter*, 19 Wash. 32, 52 Pac. 323.

Default judgments—Exceeding allegations.—A default judgment awarding interest at the rate of ten per cent is erroneous, when the complaint contains no allegation of an agreement as to the rate of interest: *Titus v. Larson*, 18 Wash. 145, 51 Pac. 351.

§ 5106. **Arbitration and award—Objections to award.**—An award of arbitrators may be set aside by a court, although not fraudulent nor made with the intent of acting unfairly in the matter, if it appears to be unfair to one of the parties, for the reason that the action of the arbitrators was based upon insufficient knowledge of the matters in controversy, and that they refused to receive information to properly guide them in the discharge of their du-

ties: *McDonald v. Lewis*, 18 Wash. 300, 51 Pac. 387.

§ 5112. **Award when affirmed has force and effect of judgment.**—Agreements between parties for the arbitration of disputes between them are governed by Ballinger's Code, sections 5102-5112, and an award made by the arbitrator agreed upon, filed in the office of the clerk of the court, and judgment entered thereon by the court is a bar to an action brought by one of the parties who refused to submit the disputed matter to arbitration, even though such action had been instituted prior to notice from the adverse party of the submission of the matter to arbitration under their agreement: *Zindorf Const. Co. v. Western Am. Co.*, 27 Wash. 31, 67 Pac. 374.

Where parties to a dispute agree to submit their differences to arbitration, under the provisions of the statutes applicable thereto, and, by the terms of their submission of the controversy to arbitration, agree to be bound by its results, the award made by the arbitrator is final, and not reviewable by the courts, in the absence of any showing of misconduct or corruption on his part: *Skagit County v. Trowbridge*, 25 Wash. 140, 64 Pac. 901.

§ 5115. Judgment on Verdict, to be Entered by Clerk—Manner of Entering—Exceptions.

When a trial by jury has been had, judgment shall be entered by the clerk immediately in conformity to the verdict, and a transcript of said judgment may be immediately filed in the office of the clerk of the superior court of any other county in the state in the manner provided by law: Provided, however, That if a motion for a new trial shall be filed, execution shall not be issued upon said judgment until said motion shall be determined: And provided, further, That the granting of a motion for a new trial shall immediately operate as the vacation and setting aside of said judgment. [Amendment, approved Mar. 6, 1903; L. 1903, p. 285, § 1.]

§ 5115. **Judgment—Entry of.**—Where a copy of a judgment is filed with the clerk on the day of its rendition, though not spread on the journal until several days thereafter, such filing must be construed as the date of entry: *Quareles v. Seattle*, 26 Wash. 226, 66 Pac. 389.

Where, after verdict, a motion for a new trial has been interposed, the rendition of judgment at the time of deciding

such motion is timely. Where the term of a trial judge has expired judgment may properly be rendered by the succeeding judge: *Raugh v. Scholl*, 19 Wash. 30, 52 Pac. 332.

The trial court may properly sign its judgment on the day of rendition, without any necessity of notice thereof being given to the losing party: *W. C. Canning Co. v. Sims*, 30 Wash. 374, 70 Pac. 1003.

[§ 5116, repealed by act of 1903; L. 1903, p. 285, § 2.]

§ 5118. **Replevin—Judgment in.**—Under Ballinger's Code, section 5118, a judgment is erroneous which decrees that "plaintiff do have and recover of and from the defendant the sum of \$330," as though the action were one in trover for the conversion of the property, instead of

in replevin for the recovery of the property, or its value only in case it could not be returned: *Hall v. Law Guar. etc. Soc.*, 22 Wash. 306, 79 Am. St. Rep. 935, 60 Pac. 643.

Where judgment is entered in favor of defendant in an action of claim and de-

livery, it is error to include therein judgment against a surety upon the bond given by plaintiff for the purpose of obtaining possession of the goods at the commencement of the action: *Bancroft-Whitney Co. v. Gowan*, 24 Wash. 66, 63 Pac. 1111.

§ 5132. Judgment liens.—Under Code of Procedure, section 449, providing that a judgment lien shall attach from the date of judgment, if a transcript thereof be filed in the county auditor's office within twenty days, a decree of foreclosure becomes a lien upon the mortgagor's general realty for any deficiency after sale of the mortgaged premises from the day of its rendition, in case a transcript of the decree is filed within twenty days thereafter. Under Code of Procedure, section 449, providing that the transcripts of judgments shall contain "the names at length of all the parties," it is necessary to include only the names of parties against whom a money judgment is rendered: *Fuller v. Hull*, 19 Wash. 400, 53 Pac. 666.

The possessory right which the locator of a mining claim has under Revised Statutes of the United States, section 2322, is not such an interest as will support the lien of a general judgment within the meaning of Ballinger's Code, section 5132, making such judgment a lien upon "the real estate of any judgment debtor": *Phoenix Mining Co. v. Scott*, 20 Wash. 48, 54 Pac. 777.

The holder of a junior judgment lien cannot by garnishment obtain priority over an intermediate judgment in the surplus money left after a sale to satisfy the senior judgment, since such money stands in place of the realty, and is subject to the judgment liens in the order of their original priority, notwithstanding the provisions of Laws 1889, page 88, section 6, subdivision 5, authorizing the payment to the judgment debtor of any proceeds remaining after the satisfaction of a judgment: *Mayer v. Morgan*, 26 Wash. 72, 66 Pac. 128.

A judgment creditor of a devisee under a will acquires no lien against the devisee's interest in the realty of the estate, when the devisee is indebted to the estate in excess of the value of his share: *Boyer v. Robinson*, 26 Wash. 118, 66 Pac. 119.

Land conveyed to a grantee is subject to the lien of a judgment against him, although no cash was paid therefor by the grantee, but the purchase price was paid in part by money advanced by his father and mother and the balance paid from funds arising from a mortgage given on the premises, the money advanced by the parents being secured by the execution of a mortgage to them on the same land, and there being no evidence of the land

having been taken by the grantee as trustee for his parents or anyone else: *Woodhurst v. Cramer*, 29 Wash. 41, 69 Pac. 501.

In the absence of statutory authority, an execution cannot be issued upon a mere transcript filed in one county showing the judgment rendered in another county, although, by virtue of Ballinger's Code, section 5132, the filing of such transcript of judgment establishes a lien upon the debtor's real estate in the county where filed: *Murray v. Briggs*, 29 Wash. 245, 69 Pac. 765.

§ 5136. Transcripts from justices' courts. An execution against personal property may be issued out of the superior court, upon a judgment rendered before a justice of the peace, when certified to, and filed with, the clerk of the superior court, since, under the provisions of Ballinger's Code, section 5136, it is declared that "upon such filing said judgment shall become to all intents and purposes a judgment of said superior court," and section 5192, Id., declares that execution may issue on any judgment given or entered in any court of record: *Grant v. Cole*, 23 Wash. 542, 63 Pac. 236.

Held not to be unconstitutional on the ground that this section was without the title of the bill: Id.

§§ 5148-5150. Judgments—Duration of lien under.—The act entitled "an act relating to the duration of judgments," etc., providing that liens on judgments shall expire six years after their rendition, and that no action shall be had on any judgment rendered in the state by which its lien shall be extended for a greater period than six years from the date of entry of the original judgment, is unconstitutional as to existing judgments on the ground that it is an impairment of the obligation of contracts: *Bettman v. Cowley*, 19 Wash. 207, 53 Pac. 53.

It being apparent that the legislative intent in enacting the statute of March 6, 1897 (Laws 1897, p. 52), "relating to the duration, was to deprive a judgment creditor of all remedy—either common law or statutory—in the matter of revival of judgments, and all the provisions of the act being connected together as a uniform piece of legislation on that one subject, the act must be construed as void in toto, as to existing judgment creditors, when one section thereof has been declared unconstitutional in so far as that class of creditors is concerned: *Palmer v. Laberee*, 23 Wash. 409, 63 Pac. 216.

Conceding that section 1 of the act is not open to objection on the same ground as the balance of the statute, because it deals with the judgment itself and not with the remedy to enforce its obligation, the section must be held unconstitutional on the ground that it destroys the obligation of existing contracts and amounts to

legislative confiscation; and hence, where an action for revival of an existing judgment was brought within six years from date of rendition, no limitation is imposed upon the right to introduce the judgment in evidence, where the trial does not occur until the lapse of a greater period than six years after its rendition: *Id.*

The act of March 6, 1897 (Laws 1897, p. 52), relating to the duration of judgments and repealing the existing law which permits the renewal of judgments is unconstitutional and void as to judgments rendered prior to its passage: *Raught v. Lewis*, 24 Wash. 47, 63 Pac. 1104.

Sale of land on execution, made more than five years after the rendition of judgment, is void, where the judgment lien has not been revived, even though the execution may have been issued prior to the expiration of such judgment lien: *Hardin v. Day*, 29 Wash. 664, 70 Pac. 118.

Revivor.—The judgment lien terminates at the expiration of five years from its date of rendition, and becomes inoperative for any purpose unless revived within the succeeding year, when the lien again begins to operate from the date of revivor: *Packwood v. Briggs*, 25 Wash. 531, 65 Pac. 846.

Where a judgment was actually announced by the court, but was not signed and entered until nearly two years subsequently, when a nunc pro tunc order was made, the bar of the statute against revival began to run from the former date: *Barthrop v. Tucker*, 29 Wash. 666, 70 Pac. 120.

The court in making a nunc pro tunc order showing that a judgment was actually rendered upon a former date cannot in such order declare that the judgment shall take effect from the former date for some purposes, but that for all other purposes it shall take effect as of the date of signing the judgment, since the effect to be given to judgments is prescribed by law: *Id.*

Under Code of Procedure, section 460-463, the act of revival does not make the lien continuous, where application therefor is not made until after the expiration of the five years; and, where the lien has ceased, prior to the order of revival, it cannot be revived so as to affect the rights of a purchaser who had acquired title subsequent to the original judgment, but such after-acquired title gains priority over the judgment during the interval between the cessation and revival of the judgment lien: *Brier v. Traders' Nat. Bank*, 24 Wash. 696, 64 Pac. 831.

§ 5153. Vacation of judgments—Meritorious defense.—A motion to vacate a decree of foreclosure is not based upon a meritorious defense, when the mover has been made a party to foreclosure proceed-

ings on the allegation that he claims some interest or lien inferior to the mortgage, and his answer offered in support of his motion is merely a denial on information and belief of the material facts in the complaint and an admission that he claims some right or lien in the mortgaged premises without setting up what such interest is: *Western Security Co. v. Lafleur*, 17 Wash. 406, 49 Pac. 1061.

A default judgment should be set aside upon application therefor made with due diligence when a showing is made by defendant that he had a meritorious defense, either in whole or in part to the action; that he had employed an attorney to appear and defend, but that owing to a mistake on the part of the defendant as to time of service upon him, he had notified his attorney that service was one day later than in reality; that service had been had upon him and an attorney employed in another city than the one in which the action was instituted; that neither defendant nor his attorney discovered the error until the day upon which plaintiff was entitled to a default; and that an attorney was immediately employed by telegraph in the city where the action was pending to secure an extension of time for appearance, and that due effort was made therefor but that default had been obtained shortly prior thereto: *Titus v. Larsen*, 18 Wash. 145, 51 Pac. 351.

Where a judgment of default is prematurely entered before the expiration of the time to plead, the defendants are entitled to have it set aside as a matter of right, without furnishing an affidavit of merits: *Hole v. Page*, 20 Wash. 208, 54 Pac. 1123.

For irregularity in obtaining judgment. Ballinger's Code, section 5153, subdivision 3, which authorizes a court to vacate or modify its judgment after the term at which it was rendered, for "irregularity in obtaining the judgment or order," does not contemplate that errors of law committed by the court may be corrected by motion to vacate, since the proper remedy in case of such errors is an appeal from the judgment: *Kuhn v. Mason*, 24 Wash. 94, 64 Pac. 182.

The action of the trial court in vacating a default judgment is not an abuse of discretion, when done upon a showing that defendant's attorney had erroneously noted the day of service as being one day later than the actual day; that he attempted to serve a demurrer upon plaintiff upon the last day, as he understood it to be from his notation, and was informed that a default had been taken the preceding day; and that while proceeding to the courthouse to ascertain the condition of the record, he was passed by plaintiff's attorney in a conveyance, who thereby reached the courthouse before him and

in the meantime procured the entry of a default and judgment against him: *Dalgardno v. Trumbull*, 25 Wash. 362, 65 Pac. 528.

For fraud in obtaining judgment.—A judgment will not be vacated upon grounds that have already been passed upon by the court in denying a motion for a new trial. Perjury is not a ground for vacating a judgment, unless there is connected with it such circumstances as will relieve the opposite party from all implication of want of diligence and completely deceive him as to the nature of the testimony: *Friedman v. Manley*, 21 Wash. 675, 59 Pac. 490.

Perjury by the prevailing party, discovered subsequently to trial, does not constitute such fraud, within the meaning of Ballinger's Code, section 5153, subdivision 4, as to warrant the vacating of the judgment in his favor, where the judgment does not rest upon the false testimony, but is supported by other evidence in the case. A judgment cannot be vacated on the ground of fraud, because in the trial the prevailing party defendant failed to voluntarily disclose the weakness of his defense, or to disclose evidence which would tend to overthrow his defense: *McDougall v. Walling*, 21 Wash. 478, 75 Am. St. Rep. 849, 58 Pac. 669.

For unavoidable casualty or misfortune. Where judgment has been rendered discharging an insolvent debtor, it will not be vacated upon the petition of a creditor whose petition does not allege that he presented his claim against the estate and brought himself within the statute, so far as the duty of a creditor is concerned; nor that he is otherwise interested in the judgment rendered; nor that, in case of its vacation, the subsequent proceedings would not result in the same judgment: *Kuhn v. Mason*, 24 Wash. 94, 64 Pac. 182.

Void judgments.—A motion to set aside a judgment for want of jurisdiction being a direct attack, it is not necessary that lack of jurisdiction appear from an inspection of the record, but it is sufficient if it is brought to the attention of the court dehors the record: *Dane v. Daniel*, 28 Wash. 155, 68 Pac. 446.

Where an affidavit in support of a motion for vacation of a judgment stated facts showing that the trial court had rendered a void decree, the truth of which was confessed by demurrer, it was the duty of the court to clear its record: *Id.*

The remedy of the grantee of a judgment debtor, whose land has been sold under a void judgment against his grantor, is not by bringing proceedings to vacate the judgment under Ballinger's Code, section 5153 et seq., but is governed by *Id.*, section 5500 et seq., which authorizes actions to recover possession of real estate

and to quiet title thereto: *Krutz v. Isaacs*, 25 Wash. 566, 66 Pac. 141.

Where a decree of foreclosure against community property was rendered upon service on one spouse only, it was made without jurisdiction over the community and the court had inherent power to vacate it on motion, irrespective of the lapse of time: *Dane v. Daniel*, 28 Wash. 155, 68 Pac. 446.

Limitations.—A court has no authority to vacate its judgment on motion made therefor years after its rendition, but the defendant must proceed by an action in equity to set aside the judgment: *State v. Superior Court*, 19 Wash. 128, 67 Am. St. Rep. 724, 52 Pac. 522, 1013.

Proceedings for.—Under Ballinger's Code, sections 5153-5162, proceedings for the vacation of a judgment constitute an independent action, and, by the terms of section 5156, it is necessary, in order to obtain the benefit of a vacation, that there be filed a petition, verified by affidavit, setting forth the judgment or order, and the facts constituting a cause to vacate it; therefore, a petition which fails to set forth, except by inference, the judgment complained of, and does not allege what the original action was, or what the issues therein determined were, is demurrable for want of stating sufficient facts: *Roberts v. Shelton Southwestern R. Co.*, 21 Wash. 427, 58 Pac. 576.

One who has attacked a judgment by motion to vacate, and has failed to prosecute an appeal from the denial of his motion, cannot subsequently maintain an action to cancel the judgment, since his remedy was by appeal, and the question of the validity of the judgment is *res judicata*: *McCord v. McCord*, 24 Wash. 529, 64 Pac. 748.

Where the appellate court is not in possession of all the circumstances surrounding the case upon which the lower court acted in refusing to vacate a judgment, there is no ground for its interference with the action of the lower court, since the question of the vacation of a judgment is so largely a matter of discretion, that the orders of the lower court therein will not be reversed, unless it plainly appears that the discretion has been abused: *Id.*

Under Ballinger's Code, section 5153, subdivision 8, which provides that a judgment may be modified or vacated for error therein shown by a minor within twelve months after arriving at full age, it is not required that the petitioner shall file his motion or petition in the original case, nor is any statutory form of procedure prescribed by such sections which must be strictly pursued: *Morrison v. Morrison*, 25 Wash. 467, 65 Pac. 779.

In an action by a minor within one year after attaining majority to vacate a judg-

ment, a sister affected by the same judgment, but who was past the age when she could maintain the like kind of action, and against whom no relief was sought, is not a necessary party to the action seeking to open up the judgment: *Id.*

The fact that the proper procedure for the vacation of a judgment upon the grounds stated in Ballinger's Code, section 4953, is by motion, while the procedure prescribed for the vacation of judgment for one of the causes provided in *Id.*, section 5153, is by petition, would not preclude the applicant from presenting by way of petition his demand for relief, based upon a joinder of the causes of action provided for under those two sections of the code: *Williams v. Breen*, 25 Wash. 666, 66 Pac. 103.

§ 5156. Petition for vacation.—Although Ballinger's Code, section 5156, requires proceedings for the vacation of judgments to be brought within one year after their rendition, the right to grant or deny the petition is discretionary with the trial court, and its refusal to grant a petition to vacate when the year of limitation was within three days of expiration would not constitute abuse of discretion, where there is no showing of diligence on the part of the petitioner, nor of any reason why he had not proceeded earlier: *Kuhn v. Mason*, 24 Wash. 95, 64 Pac. 182.

§ 5158. Necessity of valid defense.—Ballinger's Code, section 5158, which provides that a judgment shall not be vacated on motion or petition until it is adjudged that there is a valid defense to the action in which the judgment was rendered, does not contemplate a trial upon the merits, but merely that the court shall find that the facts alleged constitute a defense to the cause of action upon which the judgment is founded and that there is substantial evidence in support thereof: *Williams v. Breen*, 25 Wash. 667, 66 Pac. 103.

§ 5165. Attorneys' fees.—Where there was no provision in a decree awarding divorce and alimony authorizing the enforcement of a lien for attorney fees upon foreclosure of the lien for alimony, plaintiff in such case would be entitled only to the statutory attorney fee authorized by Ballinger's Code, section 5165, which allows to the prevailing party certain sums by way of indemnity, which are termed costs: *Trumble v. Trumble*, 26 Wash. 133, 66 Pac. 124.

§ 5166. Foreclosure—Attorneys' fees.—Under Code of Procedure, section 803, providing for the allowance in a judgment on a promissory note or mortgage of the amount of attorney's fee specially contracted in the instrument to be paid in case of suit, the amount contracted for must be construed as stipulated damages to which the plaintiff is entitled, although

the sum allowed may greatly exceed the value of the services rendered. In an action upon a note and mortgage to which the only defenses pleaded are a general denial and an allegation that the attorney's fee claimed is excessive and unreasonable, evidence on the part of defendant is not admissible for the purpose of proving that the contract between plaintiff and his attorney for fees in such action is for a sum much smaller than the attorney's fee provided for in the note and mortgage: *Scholey v. Demattos*, 18 Wash. 504, 52 Pac. 242.

The act of March 11, 1895 (Laws 1895, p. 81, Bal. Code, § 5166), authorizing the court to fix the amount of attorney fees in all cases where allowed, as the court shall deem reasonable, any stipulations in the instrument to the contrary notwithstanding, except that they shall not be fixed above the contract price, prescribes a measure of public policy and constitutes a valid enactment: *Dennis v. Moses*, 18 Wash. 538, 52 Pac. 33.

Where an attorney's fee is provided for in terms in a note or mortgage the same must be allowed by the court regardless of its reasonableness, if the instrument was executed prior to the taking effect of the law permitting the court to fix such amount as it may deem reasonable (Laws 1895, p. 81, Bal. Code, § 5166): *Gordon v. Decker*, 19 Wash. 188, 52 Pac. 856.

Under Code of Procedure, section 803, which provides that in all judgments on promissory notes, whether secured by mortgage or not, an attorney's fee may be allowed in any amount specially contracted, the court has no power, upon rendering a decree of foreclosure, to fix the attorney's fee in any other amount than that contracted for: *Vermont Loan & Trust Co. v. Greer*, 19 Wash. 611, 53 Pac. 1103.

§ 5171. Attorneys' fees—Separate defenses.—Statutory attorney fees are allowable to each of several defendants who answer separately: *Koyukuk Min. Co. v. Van De Vanter*, 30 Wash. 386, 70 Pac. 966.

§ 5173. Costs—Disbursements—Witness fees.—Where plaintiff, in order to meet issues of fact tendered by defendant, has witnesses in attendance at the trial, he is entitled to an allowance of their fees as costs, although their presence may in fact prove unnecessary by reason of the defendant's failure to introduce testimony upon such issues: *Ivall v. Willis*, 17 Wash. 645, 50 Pac. 467.

Stenographers' fees for attendance at court and transcribing testimony cannot be taxed against the losing party: *Bringgold v. Spokane*, 19 Wash. 333, 53 Pac. 368.

Where the party in whose favor judgment is rendered neglects for more than

ten days to file his cost-bill with the clerk, as required by Ballinger's Code, section 5173, the adverse party is entitled to have the cost-bill stricken as to all items except such fees as appear upon the face of the papers: *Matheson v. Ward*, 24 Wash. 407, 85 Am. St. Rep. 955, 64 Pac. 520.

The consolidation, for the purposes of trial, of separate actions by the same plaintiff against separate defendants, for the foreclosure of various liens for booming logs, does not affect the rights of the several defendants to recover statutory costs in each of the original cases so consolidated: *Gray's Harbor Boom Co. v. McAmant*, 21 Wash. 465, 58 Pac. 573.

§ 5185. Costs—Retaxation of.—Where, in a judgment for costs in favor of the prevailing party, the costs are taxed in blank, the failure of the losing party to move for retaxation within ten days after entry of judgment will not constitute a waiver of the right to retaxation: *Bringgold v. Spokane*, 19 Wash. 333, 53 Pac. 368.

§ 5186. Cost bond required of nonresident plaintiffs.—Residence in the county in which an action is brought is not a requisite for a surety upon a cost bond, when sureties upon a cost bond are not required to justify as to their separate property, until after objection is raised as to their qualifications: *Brooks v. James*, 16 Wash. 335, 47 Pac. 751.

Bond not required after answer.—The order of the court overruling a motion for a cost bond is not matter of complaint, when the court subsequently sustains an objection to the proceeding in which the cost bond is demanded. Where judgment against a nonresident defendant has been vacated upon her petition therefor, and an answer filed by her traversing the complaint and seeking affirmative relief against the plaintiffs, the plaintiffs, at that stage of the proceedings, have no right under the statute to demand a cost bond, as the defendant stands in the same position as if she had answered the complaint originally, and her status as defendant would not be affected by her demand for affirmative relief: *State v. Superior Court*, 17 Wash. 564, 50 Pac. 482.

The fact that defendants had demanded a cost bond from a nonresident plaintiff would not operate as a stay against a voluntary dismissal by plaintiff of the action, where she had failed to file the bond: *Dane v. Daniel*, 28 Wash. 157, 68 Pac. 446.

§ 5197. Execution—Sheriff's duty on making levy on money, effect of.—A levy of execution upon money constitutes a satisfaction of the judgment, though not paid over by the sheriff until the determination of another suit, where it was stipulated by the judgment creditor that it should be held by the sheriff to abide the result thereof; and in such case the

judgment creditor would not be entitled to the issuance of an alias execution for the purpose of recovering interest on the sum the sheriff had been withholding: *Adams v. Bank*, 30 Wash. 20, 70 Pac. 105.

§ 5203. Execution—Levy on and sale of franchises.—Laws 1897, page 96, providing a method for the sale of franchises, has reference to such as are comprehended within grants from public or quasi public authority, and has no reference to "news contracts," which pass under the name of "franchises" in the newspaper trade, where the term is used, not in its legal sense, but as having a particular trade meaning: *Lawrence v. Times Printing Co.*, 22 Wash. 482, 61 Pac. 166.

Possession during redemption period.—Laws 1899, page 93, section 15, awarding possession during the period of redemption from an execution sale to a tenant in possession holding under an unexpired lease confers no rights upon one whose tenancy was created by persons who had had no interest in or title to the property whatever: *Murray v. Briggs*, 29 Wash. 245, 69 Pac. 765.

Under Laws 1899, page 93, section 15, a judgment debtor is entitled to the possession of farm lands sold on execution during the period of redemption: *Woodhurst v. Cramer*, 29 Wash. 40, 69 Pac. 501.

Homestead—Execution sales.—Laws 1899, page 93, section 15, which provides that in case of the sale on execution of any homestead occupied for that purpose, the judgment debtor shall have the right to retain possession thereof during the period of redemption without accounting for issues or value of occupation is unconstitutional as to foreclosure sales under mortgages executed prior to its passage, when the law in force gave the purchaser on foreclosure sale the right of possession from the day of sale: *Canadian Am. M. & T. Co. v. Blake*, 24 Wash. 102, 85 Am. St. Rep. 946, 63 Pac. 1100.

§ 5214. Homestead—Selection of, when may be made.—A homestead may be selected at any time before execution sale, as provided by Code of Procedure, section 481, as the later act of March 13, 1895 (Laws 1895, p. 109), defining a homestead and providing for the manner of selecting the same, in no way affects the existing provision in relation to the time of making a selection, but simply undertakes to direct the manner of selection. The right to claim certain premises as a homestead is not defeated by the fact that claimant has mortgaged the premises by giving what purports on its face to be a warranty deed: *Wiss v. Stewart*, 16 Wash. 376, 47 Pac. 736.

The mere occupancy of a dwelling-house as a residence and homestead constitutes a selection as a homestead, under Code of Procedure, section 481, and affords notice

to subsequent purchasers or encumbrancers of the right to assert the exemption, even by the wife in the separate property of the husband: *Id.*

Mere occupancy of property as a home amounted to a selection of a homestead, prior to the enactment of the homestead law of 1895, and a selection made at any time before sale was sufficient to entitle the claimant to exemption: *In re Feas' Estate*, 30 Wash. 51, 70 Pac. 270.

A failure to select a homestead in the manner designated by Laws 1895, page 109, does not establish an abandonment of the homestead, as under Code of Procedure, section 481, the selection may be made at any time before sale: *Anderson v. Stadlmann*, 17 Wash. 433, 49 Pac. 1070. *When may be Selected.*

Laws 1895, page 109, which defines a homestead and provides for the manner of selecting the same, does not affect prior existing statutes relating to homesteads, which provide that a debtor may select a homestead at any time before sale on execution: *Ross v. Howard*, 25 Wash. 2, 64 Pac. 794.

§ 5217. Homestead exempt from forced sale, when.—Under the homestead exemption statutes of this state, a general judgment lien does not operate upon, and does not attach to, premises which constitute a homestead. In an action to set aside a transfer of certain realty, as in fraud of a judgment creditor, and subject it to the lien of his judgment, a decree that the premises were subject to the satisfaction of the judgment and should be sold under execution for that purpose, is final and conclusive upon the right of the judgment debtor or his vendees to raise the issue in a subsequent action that the premises were the homestead of the debtor, since that defense should have been raised in the prior action: *Traders' National Bank v. Schorr*, 20 Wash. 1, 72 Am. St. Rep. 17, 54 Pac. 543.

§ 5219. Mortgage by husband and wife, form of.—A mortgage of homestead premises joined in by husband and wife need not expressly mention the homestead in order to create a mortgage lien thereon, but a mortgage in the ordinary form, purporting to convey the whole right, title and interest of husband and wife, is sufficient: *Brown v. Elwell*, 17 Wash. 442, 49 Pac. 1068.

A mortgage by the husband alone of his separate property in which the wife has a right to claim homestead exemption, is void as to her, under Code of Procedure, section 483: *Anderson v. Stadlmann*, 17 Wash. 433, 49 Pac. 1070.

§ 5220. How abandoned.—The fact that a husband who had claimed a homestead in community property belonging to himself and his deceased wife had made conveyances thereof to his children did not

constitute an abandonment of the homestead, so as to subject the land to sale for debts of the deceased wife's interest in such community estate: *In re Feas' Estate*, 30 Wash. 52, 70 Pac. 270.

§ 5222. Levy on homestead.—In an action to set aside a sheriff's sale of real estate on the ground that it was exempt as a homestead, the admission of evidence as to residence thereon after the filing of the declaration of homestead would not constitute error, where such evidence was a part of the testimony showing residence on the land at the time of and prior to the declaration, was restricted to a period of four months just preceding and following the filing of the declaration, and was introduced merely for the purpose of showing bona fide residence: *Smith v. Vesey*, 30 Wash. 18, 70 Pac. 90.

The admission in evidence of the original declaration of homestead instead of a certified copy thereof was not error, where it contained the indorsement of the county auditor showing the date of its filing and its entry of record: *Id.*

§ 5246. Homestead — Assignment to family on death of owner.—The denial of a minor's claim to have the use of his mother's portion of community real property assigned to him upon her death, as permitted by Ballinger's Code, section 5246, will not be reversed, when it appears that at the time of the order he was within sixteen days of the age of majority, and there is no showing that the use of the property for that limited a period would have been of value to him: *Stewin v. Thrift*, 30 Wash. 37, 70 Pac. 116.

Under the statute permitting either the husband or wife to claim a homestead in community property while both are living, and vesting it in the survivor on the death of either, it is the spirit and intention of the law that a husband may, after his wife's death, select a homestead from the community property for the benefit of himself and family: *In re Feas' Estate*, 30 Wash. 51, 70 Pac. 270.

Where a homestead in community property has been once lawfully claimed, it continued as a homestead, even though the children have attained their majority and left the parental roof: *Id.*

§ 5248. Exemptions — Mechanics. — A mechanic who is neither the head of a family nor a householder is entitled to exemption from execution under Ballinger's Code, section 5248, subdivision 6, since the word "and" before "family" should be construed as "or" for the reason that in all the other subdivisions of the exemption statute designating the class of persons who are exempt the disjunctive "or" is used, and there is nothing in the statute justifying an interpre-

tation that mechanics should be subjected to a different rule from that applied to members of other trades and vocations: *Geiger v. Kobilka*, 26 Wash. 171, 90 Am. St. Rep. 733, 66 Pac. 423.

Farmers' tools.—Where tools and implements useful in logging operations are,

from the nature of the country, necessary articles in farming, clearing and improving farms, they may be claimed as exempt under the exemptions allowed farmers, although having been used also in the logging business: *State v. Creech*, 18 Wash. 187, 51 Pac. 363.

§ 5248a. Exemptions from Forced Sale.

No property shall be exempt from execution for clerk's, laborer's, or mechanic's wages, earned within this state, nor shall any property be exempt from execution issued upon a judgment against an attorney or agent on account of any liability incurred by such attorney or agent to his client or principal on account of any moneys, or other property coming into his hands, from or belonging to his client or his principal. [Amendment, approved Mar. 18, 1901; L. 1901, p. 323.]

§ 5256. Exemptions—Exceptions.

That from and after the passage of this act, no property shall be exempt from execution for clerk's, laborer's, or mechanic's wages earned within this state, nor for actual necessities, not exceeding fifty dollars in value or amount furnished to the defendant or his family within sixty days preceding the beginning of an action to recover therefor, nor shall any property be exempt from execution issued upon a judgment against an attorney or agent on account of any liability incurred by such attorney or agent to his client or principal on account of any money or other property coming into his hands from or belonging to his client or principal: Provided, That nothing herein shall be construed as repealing or in any wise affecting section 5412 of Ballinger's Annotated Code and Statutes of Washington, as amended by the law of 1901 relative to the exemptions in garnishment suits. [Approved Mar. 14, 1903; L. 1903, p. 135.]

§ 5262. Adverse claims to property levied on.—In a summary proceeding instituted under Code of Procedure, section 491, by a claimant of property levied upon by the sheriff as the property of another, under an affidavit alleging ownership and right to immediate possession in claimant, the claimant is entitled to prove that he was in possession of the property and was holding it as security for an indebtedness due him from the execution defendant, and is not confined to proof of absolute ownership (*Silsby v. Aldridge*, 1 Wash. 171, 23 Pac. 836, distinguished): *Bank v. Hagan*, 16 Wash. 45, 47 Pac. 223.

§ 5271. Levy on joint or partnership property.—When a sheriff levies upon specific personal property belonging to a partnership as the property of one copartner, his levy is void, and the partnership may maintain an action against him for conversion, since section 5271, Ballinger's Code, providing for levy upon an individual partner's interest, does not authorize the sheriff to deprive a copartner in any way of his interest in the property: *Skavdale v. Moyer*, 21 Wash. 10, 56 Pac. 841.

§ 5273. Execution of Decrees of Foreclosure—Deficiency Judgments—Redemptions.

Decrees of Foreclosure of Mortgages.

A decree of foreclosure of mortgage or other lien may be enforced by execution as an ordinary judgment or decree for the payment of money. The execution shall contain a description of the property described in the decree. The sheriff shall indorse upon the execution the time when he receives it, and he shall thereupon forthwith proceed to sell such property, or so much thereof as may be necessary to satisfy the judgment, interest and costs upon giving the notice prescribed in section 5275.

5275. 5275 and 5273.

§ 5274. Deficiency Judgments.

When there is an agreement of the judgment debtor for the payment of any sum of money secured by a mortgage or other lien, and a deficiency judgment is consented to in said agreement, the court may direct in the decree that the balance due and costs which may remain unsatisfied after the sale of the property shall be satisfied from any property of the judgment debtor, and if any part of the judgment, interest and costs remains unsatisfied, the sheriff shall forthwith proceed to levy upon any property of the judgment debtor not exempt from execution, and all subsequent proceedings under said execution shall conform to the provisions of this act. The judgment creditor may also obtain from the clerk of the court execution on executions in the ordinary form for such deficiency: Provided, That in case of mortgage foreclosure where the mortgage contains a stipulation that no deficiency judgment shall be taken against the mortgagor, but that the mortgagee shall look to the mortgaged premises for satisfaction of his claim, no deficiency judgment shall be allowed. The commencement of an action for the recovery of a debt secured by mortgage not asking a foreclosure of the mortgage and brought before a foreclosure of the mortgage and sale thereunder, shall be, and be deemed to be, a waiver of the mortgage security; and this provision may not be waived or avoided by agreement contained in the mortgage or otherwise. [Approved Mar. 8, 1899, L. 1899, p. 85.]

See p. 623 as to deficiency judgment, made of foreclosure, etc.

§ 5275. Notice of Sale.

Before the sale of property under execution, order of sale or decree, notice thereof shall be given as follows:

1. In case of personal property, by posting written or printed notice of the time and place of sale in three (3) public places in the county where the sale is to take place, for a period of not less than ten (10) days prior to the day of sale.

2. In case of real property, by posting a similar notice, particularly describing the property for a period of not less than four (4) weeks prior to the day of sale, in three (3) public places in the county, one of which shall be at the courthouse door, where the property is to be sold, and publishing a copy thereof once a week, consecutively, for the same period, in a newspaper of general circulation published in the county.

3. All notices of sales of property on execution or order of sale required by law to be published in any newspaper shall be so published in a newspaper of the county which shall be selected by the sheriff, and if there is no newspaper published, in the county, then such notice shall be published in the newspaper published in this state nearest to the place of sale: Provided, That if the person at whose instance the execution or order of sale is issued, or his attorney, shall present to the sheriff a receipt of the publisher of any newspaper, showing full payment for the publication, then the notice shall be published in that newspaper: And provided, further, That the charge for any such publication shall not exceed seventy-five cents per square for first insertion, and thirty-seven and one-half cents per square for each subsequent insertion. [Amendment, approved Mar. 17, 1903; L. 1903, p. 381, § 1.]

§ 5276. Sales—How Made.

All sales of property under execution, orders of sale or decree, shall be made by auction between nine o'clock in the morning and four o'clock in the afternoon. After sufficient property has been sold to satisfy the execution, no more shall be sold. Neither the officer [officer] holding the execution, nor his deputy, shall become a purchaser, or be interested in any purchase at such sale. When the sale is of personal property capable of manual delivery, and not in the possession of a third person, association or corporation, it shall be within view of those who attend the sale, and be sold in such parcels as are likely to bring the highest price; and when the sale is of real property, consisting of several known lots or parcels, they shall be sold separately or otherwise as is likely to bring the highest price, or when a portion of such real property is claimed by a third person, and he requires it to be sold separately, such portion shall be sold separately. Sales of real property shall be made at the courthouse door on Saturday.

§ 5277. When Absolute—When Redemption Allowed.

Upon a sale of real property under execution, decree or order of sale, when the estate is less than a leasehold of two years unexpired term, the sale shall be absolute. In all other cases such property shall be subject to redemption, as hereinafter provided. At the time of the sale the sheriff shall give to the purchaser a certificate of the sale, containing a particular description of the property sold, the price bid for each distinct lot, or parcel, the whole price paid, and when subject to redemption, it shall be so stated. The matters contained in such certificate shall be substantially stated in the sheriff's return of his proceedings upon the writ.

§ 5278. Confirmation—Payment of Proceeds—Resale.

Upon the return of any sale of real estate as aforesaid, the clerk shall enter the cause, on which the execution or order of sale issued, by its title, on the motion docket, and mark opposite the same: "Sale of land for confirmation," and the following proceedings shall be had:

1. The plaintiff at any time after ten days from the filing of such return shall be entitled, on motion therefor, to have an order confirming the sale, unless the judgment debtor, or in case of his death, his representative, shall file with the clerk within ten days after the filing of such return, his objections thereto.
2. If such objections be filed the court shall, notwithstanding, allow the order confirming the sale, unless on the hearing of the motion, it shall satisfactorily appear that there were substantial irregularities in the proceedings concerning the sale, to the probable loss or injury of the party objecting. In the latter case, the court shall disallow the motion and direct that the property be resold, in whole or in part, as the case may be as upon an execution received of that date.
3. Upon the return of the execution, the sheriff shall pay the proceeds of sale to the clerk, who shall then apply the same, or so much thereof as may be necessary, in satisfaction of the judgment. If an order of resale be afterwards made, and the property sell for a greater amount to any person other than the former purchaser, the clerk shall first repay to such purchaser the amount of his bid out of the proceeds of the latter sale.
4. Upon a resale, the

bid of the purchaser at the former sale shall be deemed to be renewed and continue in force, and no bid shall be taken, except for a greater amount. An order confirming a sale shall be a conclusive determination of the regularity of the proceedings concerning such sale as to all persons in any other action, suit or proceeding whatever. 5. If, after the satisfaction of the judgment, there be any proceeds of the sale remaining, the clerk shall pay such proceeds to the judgment debtor, or his representative, as the case may be, at any time before the order is made upon the motion to confirm the sale: Provided, Such party file with the clerk a waiver of all objections made or to be made to the proceedings concerning the sale; but if the sale be confirmed, such proceeds shall be paid to said party of course; otherwise they shall remain in the custody of the clerk until the sale of the property has been disposed of.

§ 5279. Redemption.

Property sold subject to redemption, as above provided, or any part thereof separately sold, may be redeemed by the following persons, or their successors in interest:

1. The judgment debtor or his successor in interest in the whole or any part of the property separately sold.

2. A creditor having a lien by judgment, decree or mortgage, on any portion of the property, or any portion of any part thereof, separately sold, subsequent in time to that on which the property was sold. The persons mentioned in subdivision two of this section are termed redemptioners.

§ 5280. Who may Redeem.

The judgment debtor or his successor in interest, or any redemptioner, may redeem the property at any time within one year after the sale, on paying the amount of the bid, with interest thereon at the rate of eight per cent per annum to the time of redemption, together with the amount of any assessment or taxes which the purchaser or his successor in interest may have paid thereon after purchase, and like interest on such amount; and if the purchaser be also a creditor having a lien, by judgment, decree or mortgage, prior to that of the redemptioner, other than the judgment under which such purchase was made, the amount of such lien with interest.

§ 5281. Redemption—By Whom—How Made.

If property be so redeemed by a redemptioner, another redemptioner may, within sixty days after the last redemption, again redeem it from the last redemptioner by paying the sum paid on such last redemption with interest at the rate of eight per cent per annum, and the amount of any taxes or assessment which the last redemptioner may have paid thereon after the redemption by him, with like interest on such amount, and in addition thereto by paying the amount of any liens, by judgment, decree or mortgage, held by said last redemptioner prior to his own, with interest; but the judgment under which the property was sold need not be so paid as a lien. The property may be again, and as often as a redemptioner is so disposed, redeemed from any previous redemptioner within sixty days after the last redemption, on paying the sum paid on the previous redemption, with interest thereon at the rate

of eight per cent per annum, and the amount of any assessments or taxes which the last previous redemptioner paid after the redemption by him, with like interest thereon, and the amount of any liens by judgment, decree or mortgage, other than the judgment under which the property was sold, held by the last redemptioner, previous to his own, with interest. If the purchaser or redemptioner shall pay any taxes or assessments, or have or acquire any such lien as herein mentioned, he must file a statement thereof with the auditor of the county where said property is situate before the property shall have been redeemed from him, otherwise the property may be redeemed without paying such tax, assessment or lien. Such statement shall be recorded by such auditor.

§ 5282. Sheriff's Deed—Certificate of Redemption.

If no redemption be made within one year after the sale the purchaser or his assignee is entitled to a conveyance; or, if so redeemed, whenever sixty (60) days have elapsed, and no other redemption has been made, or notice given operating to extend period of redemption, and the time for redemption has expired, the last redemptioner or his assignee is entitled to a sheriff's deed; but in all cases the judgment debtor shall have the entire period of one year from the date of the sale to redeem the property. If the judgment debtor redeem he must make the same payments as are required to effect a redemption by the redemptioner. If the judgment debtor redeem, the effect of the sale is terminated and he is restored to his estate. A certificate of redemption must be filed and recorded in the office of the auditor of the county in which the property is situated, and the auditor must note the record thereof in the margin of the record of the certificate of sale.

§ 5283. Prior Lien Redeems First.

When two or more persons apply to the sheriff to redeem at the same time he shall allow the person having the prior lien to redeem first, and so on. The sheriff shall immediately pay the money over to the person from whom the property is redeemed, if he attend at the redemption; or if not, at any time thereafter when demanded. When a sheriff shall wrongfully refuse to allow any person to redeem, his right to redeem shall not be prejudiced thereby, and the sheriff may be required, by order of the court, to allow such redemption.

§ 5284. Notice of Intention to Redeem.

The mode of redeeming shall be as provided in this section. The person seeking to redeem shall give the sheriff at least five days' written notice of his intention to apply to the sheriff for that purpose. It shall be the duty of the sheriff to notify the purchaser or redemptioner, as the case may be, or his attorney, of the receipt of such notice, if such person be within such county. At the time and place specified in such notice the person seeking to redeem may do so by paying to the sheriff the sum required. The sheriff shall give the person redeeming a certificate stating therein the sum paid on redemption, from whom redeemed, the date thereof and a description of the property redeemed. A person seeking to redeem shall submit to the sheriff the evidence of his right thereto, as follows:

§ 5285. Evidence of Right to Redeem to be Furnished.

1. If he be a lien creditor, a copy of the docket of the judgment or decree under which he claims the right to redeem, certified by the clerk of the court where such judgment or decree is docketed; or if he seeks to redeem upon mortgage, the certificate of the record thereof; also an affidavit, verified by himself or agent, showing the amount then actually due thereon.

2. A copy of any assignment necessary to establish his claim, verified by the affidavit of himself or agent, showing the amount then actually due on the judgment, decree or mortgage.

3. If the redemptioner or purchaser has a lien prior to that of the lien creditor seeking to redeem, such redemptioner or purchaser shall submit to the sheriff the evidence thereof, and the amount due thereon, or the same may be disregarded.

§ 5288. Sheriff's sale—Mode of—Sale of separate parcels.—Where mortgaged premises have been sold by the sheriff, on foreclosure in parcels, and the sale has been confirmed by the court, the mortgagee is entitled to redeem any parcel so sold separately by tendering the amount for which it was sold, together with interest on same and taxes and costs chargeable against said tract, under the provisions of Code of Procedure, section 504, authorizing the sheriff to sell lots and parcels separately or together, as he shall deem most advantageous, and of section 512, allowing redemption, "or any part thereof separately sold": *State ex rel. Twiss v. Carpenter*, 19 Wash. 378, 53 Pac. 342.

Execution sale—Confirmation.—Where an execution sale has been confirmed without objection, the courts cannot take jurisdiction of a petition to quash and set aside the execution levy and sale, although attended by such irregularities as confusion between the dates of the sale notices and the date of sale, the sale of the land as an entirety without being offered in parcels, and its sale for a larger amount than was actually due: *Otis v. Nash*, 26 Wash. 39, 66 Pac. 111.

Semble, that, under the statute which authorizes a judgment debtor to object to the confirmation of an execution sale of his property, the successor in interest of such judgment debtor is also entitled to object: *Hardin v. Day*, 29 Wash. 664, 70 Pac. 118.

Right of possession of buyer.—A purchaser at a sale of real estate under decree of foreclosure, as well as upon an execution sale, is entitled to the possession of the premises sold from the time of the acceptance of his bid by the sheriff, and even prior to the confirmation of such sale by the court, under the provisions of Code of Procedure, sections 507, 508, 519: *State v. Northwestern etc. Bank*, 18 Wash. 118, 50 Pac. 1023.

Decided Nov. 1897.

Objections to confirmation, when filed.—Under Code of Procedure, section 508, providing that plaintiff shall be entitled to an order confirming a sale upon execution at the term of court next following the return of the execution, or if it be returned in term time, then at such term, unless the judgment debtor shall file objections thereto ten days before such term, or if the writ be returned in term time, then five days after the return thereof, objections to confirmation which were filed more than a year after the return should be stricken on motion of plaintiff; objections to the confirmation of a sale upon execution can, under Code of Procedure, section 508, go only to matters concerning the irregularity of the sale and cannot relate to the jurisdiction of the court in rendering the judgment. Although terms of court are abolished by the constitution, the provisions of Code of Procedure, section 508, respecting "terms of court" must be construed as synonymous with the "sessions of court," provided for by the rules of the superior courts of the state: *Krutz v. Batts*, 18 Wash. 460, 51 Pac. 1054.

Execution sale—Redemption.—Under Code of Procedure, section 516, one seeking to redeem from sale on mortgage foreclosure need give notice only to the purchaser at the sale or to prior redemptioners, if any: *Baggot v. Turner*, 21 Wash. 339, 58 Pac. 212.

A redemption from foreclosure sale by a grantee of the judgment debtor operates the same as if made by the judgment debtor himself, to extinguish the foreclosure proceedings, and the estate then stands as if no foreclosure sale had ever been made, and thereby revives the lien of a subsequent mortgage which would have been barred if no redemption had been made: *De Roberts v. Stiles*, 24 Wash. 611, 64 Pac. 795.

A judgment creditor had no right of redemption from a mortgage foreclosure

sale which was made prior to the act of 1897 (Laws 1897, p. 75, § 15), which was the first enactment in this state conferring upon judgment creditors such right, but

which expressly declared that rights of redemption from sales rendered prior thereto should remain unaffected: *Geddis v. Packwood*, 30 Wash. 270, 70 Pac. 481.

§ 5292. Rents and Profits.

The purchaser, from the time of the sale until the redemption, and the redemptioner from the time of his redemption until another redemption, except as hereinafter provided, is entitled to receive from the tenant in possession the rents of the property sold, or the value of the use and occupation thereof. But when any rents or profits have been received by such person or persons thus entitled thereto, from the property thus sold, preceding the redemption thereof from him, the amount of such rents and profits, over and above the expenses paid for operating, caring for, protecting and insuring the property, shall be a credit upon the redemption money to be paid; and if the redemptioner or other person entitled to make such redemption, before the expiration of the time allowed for such redemption, files with the sheriff a demand in writing for a written and verified statement of the amounts of such rents and profits thus received, and expenses paid and incurred, the period for redemption is extended five (5) days after such sworn statement is given by such person thus receiving such rents and profits, or by his agent, to the person making such demand, or to the sheriff. It shall be the duty of the sheriff to serve a copy of such demand upon the person receiving such rents and profits, his agent or his attorney, if such service can be made in the county where the property is situate. If such person shall, for a period of ten days after such demand has been given to the sheriff, fail or refuse to give such statement, such redemptioner or other person entitled to redeem from such sale, making such demand, may bring an action within sixty days after making such demand, but not later, in any court of competent jurisdiction, to compel an accounting and disclosure of such rents, profits and expenses, and until fifteen days from and after the final determination of such action the right of redemption is extended to such redemptioner or other person making such demand who shall be entitled to redeem. If a sworn statement is given by the purchaser or other person receiving such rents and profits, and such redemptioner or other person entitled to redeem, who makes such demand, desires to contest the correctness of the same, he must first redeem in accordance with such sworn statement, and if he desires to bring an action for an accounting thereafter he may do so within thirty days after such redemption, but not later: Provided, That if such property be farming or agricultural property and be in possession of any purchaser or any redemptioner and is redeemed after the first day of April and before the first day of December, and the purchaser or his tenant has performed any work in preparing such property for crops, or planted crops, he shall be entitled to reimbursement for such work and labor or the right to retain possession of such property until the first day of December following, and the redemptioner shall be entitled to collect the reasonable rental value thereof during such farming year, unless such reasonable rental shall have been collected by such purchaser and accounted for to the redemptioner.

§ 5295. Waste may be Restrained by Whom.

Until the expiration of the time allowed for redemption the court may restrain the commission of waste on the property. But it is not waste for the person in possession of the property at the time of the sale or entitled to possession afterwards during the period allowed for redemption to continue to use it in the same manner in which it was previously used, or to use it in the ordinary course of husbandry, or to make the necessary repairs of buildings thereon, or to use wood or timber on the property therefor, or for the repairs of fences, or for fuel in his family while he occupies the property.

§ 5296. Possession—Right of in Whom. — *In Purchaser*

The purchaser from the day of sale until a resale or redemption, and the redemptioner from the day of his redemption until another redemption, shall be entitled to the possession of the property purchased or redeemed, unless the same be in the possession of a tenant holding under an unexpired lease, and in such case shall be entitled to receive from such tenant the rents or the value of the use and occupation thereof during the period of redemption: Provided, That when a mortgage contains a stipulation that in case of foreclosure the mortgagor may remain in possession of the mortgaged premises after sale and until the period of redemption has expired the court shall make its decree to that effect and the mortgagor have such right: Provided further, That as to any land so sold which is at the time of the sale used for farming purposes, or which is a part of a farm used at the time of sale for farming purposes the judgment debtor shall be entitled to retain possession thereof during the period of redemption and the purchaser or his successor in interest shall if the judgment debtor do not redeem have a lien upon the crops raised or harvested thereon during the period of such possession for interest on the purchase price at the rate of six per cent per annum during the period of possession and for any taxes with interest: And, provided further, That in case of any homestead occupied for that purpose at the time of sale, the judgment debtor shall have the right to retain possession thereof during the period of redemption without accounting for issues or value of occupation. / 8 W. 118. Rev '97.

§ 5297. Conveyance by Sheriff.

In all cases where real estate has been, or may hereafter be sold in pursuance of law by virtue of an execution or other process, issued upon an ordinary money judgment, or by virtue of execution, or other process issued upon a decree for the foreclosure of a mortgage or other lien it shall be the duty of the sheriff or other officer making such sale to execute and deliver to the purchaser, or other person entitled to the same a deed of conveyance of the real estate so sold immediately after the time for redemption from such sale has expired: Provided, Such sale has been duly confirmed by order of the court. In case the term of office of the sheriff or other officer making such sale shall have expired before a sufficient deed has been executed, then the successor in office of such sheriff shall, within the time specified in this act, execute and deliver to the purchaser or other person entitled to the same a deed of the premises so sold, and such deeds shall be as valid and effectual to convey to the grantee the lands

or premises so sold, as if the deed had been made by the sheriff or other officer who made the sale.

§ 5298. Record of Deed—Conditions Precedent to.

The party to whom such sheriff's deed is given shall, upon receipt thereof, take the same to the clerk of the superior court, who shall enter in his book of levies, where the levy is recorded, the sale of real estate therein conveyed, and shall indorse the fact upon the deed, with the date when presented to him and when made. And no county auditor shall record any such deed without such indorsement.

Repeal.

An act relating to sale of property under execution, passed by the legislature March 2, 1897, and approved by the governor March 10, 1897, entitled: "An act relating to the sale of property under execution and decrees, and the confirmation of sheriff's sales and repealing section[s] 511, 512, 513, 514, 515, 516, 517, 518, 519, 520 and 521 of Vol. 2 of Hill's Annotated Statutes and Codes of the State of Washington, relating to the redemption of real estate sold on decree of foreclosure and on execution" is hereby repealed: Provided, Such repeal shall not affect any rights existing under said act or said sections nor any proceeding pending thereunder.

An emergency exists and this act shall take effect immediately. [Approved Mar. 8, 1899; L. 1899, p. 85.]

Sale under foreclosure—Construction of statute.—By construing together and harmonizing so far as possible the various seemingly incongruous provisions of the act of March 10, 1897 (Laws 1897, p. 70, Bal. Code, §§ 5273-5285, 5292, 5295-5298), the legislative intent is apparent therefrom to make provision for the appraisement of all property sold under execution or decrees foreclosing mortgage and other special liens held by private parties to the following effect: Where debtor and creditor cannot agree upon an estimate of value, the valuation shall be made by appraisers, and the property cannot be sold for less than eighty per cent of such appraisement when incapable of partition, unless the amount of the debt be less, when it may be sold for such smaller sum; and, further, when the real estate is capable of division into parcels, the land may be sold by parcels, whether under execution or foreclosure, though in case of foreclosure of liens the whole property covered by lien shall all remain as security for the debt until its satisfaction: *Dennis v. Moses*, 18 Wash. 537, 52 Pac. 333.

Waiver of Appraisement.—The statutory provision in the act of March 10, 1897, requiring an appraisement of real estate sold under execution or decree of foreclosure, cannot be waived in the contract creating the indebtedness sought to be enforced, but, after default, the debtor may waive a further appraisement upon notice given by the judgment creditor of

his estimation of the value of the realty: *Id.*

§ 5299. Rights of judgment debtor.—The statute allowing a purchaser of real estate at execution sale the rents and profits during the period allowed for redemption was one affecting the remedy and became no part of the law of the contract; hence, the enactment of Ballinger's Code, section 5299, which entitles the judgment debtor to possession, and to the rents, issues and profits of his real estate sold on execution during the redemption period, does not impair the obligation of contracts, although entered into prior to its passage: *Wilson v. Wold*, 21 Wash. 399, 75 Am. St. Rep. 846, 58 Pac. 223.

The act of March 16, 1897 (Laws 1897, p. 227, Bal. Code, § 5299), granting to judgment debtors the right of possession, rents, issues and profits of real estate sold under execution, during the period of redemption, is one declaring a public policy, and cannot be waived by the debtor in the instrument creating the debt, though after default the law would permit a waiver: *Dennis v. Mose*, 18 Wash. 538, 52 Pac. 333.

A sale of real property on execution does not entitle the purchaser to the possession nor to the profits during the year of redemption, where the judgment debtor has made a bona fide assignment of a lease of the premises prior to the date of the execution sale: *Griffith v. Burlingame*, 18 Wash. 429, 51 Pac. 1059.

§ 5312. Supplemental Proceedings.

At any time within six years after entry of a judgment for the sum of twenty-five (\$25) dollars or over, and after the return of an execution against property wholly or partially unsatisfied upon proof thereof, by affidavit or other competent written evidence satisfactory to the judge or after the issuing of an execution against property and upon proof by the affidavit of a party or otherwise to the satisfaction of the court or a judge thereof judgment debtor has property which he unjustly refuses to apply toward the satisfaction of the judgment, such court or judge may, by an order, require the judgment debtor to appear at a specified time and place before the judge granting the order, or a referee appointed by him, to answer concerning the same; and the judge to whom application is made under this act may, if it is made to appear to him by the affidavit of the judgment creditor, his agent or attorney that there is danger of the debtor absconding, order the sheriff to arrest the debtor and bring him before the judge granting the order. Upon being brought before the judge he may be ordered to enter into a bond, with sufficient sureties, that he will attend from time to time before the judge or referee, as shall be directed, during the pendency of the proceedings and until the final termination thereof. [Amendment, approved Mar. 13, 1899; L. 1899, p. 146.]

§ 5312. Facts authorizing.—The return of an execution unsatisfied is sufficient to authorize a resort to proceedings supplementary to execution. Where the judgment creditor's affidavit alleges that an execution upon a judgment against defendant has been returned nulla bona, and that defendant has personal property which he refuses to apply in satisfaction of the judgment but that he secretes same and withholds it from execution, the affidavit states facts sufficient to authorize the court to require defendant to ap-

pear for examination concerning the allegations of the affidavit: *Klepsch v. Donald*, 18 Wash. 150, 51 Pac. 352.

§ 5319. Facts authorizing order to deliver property to sheriff.—Where it appears from an examination of defendant in proceedings supplementary to execution that he has personal property which he has withheld from execution, the court is warranted in ordering him to turn over such property to the sheriff for sale: *Klepsch v. Donald*, 18 Wash. 150, 51 Pac. 352.

§ 5335. Before Whom Begun.

Special proceedings under this act may be instituted and prosecuted before the superior court of the county in which the judgment was entered or any judge thereof, or before the superior court of any county to the sheriff of which an execution has been issued or in which a transcript of said judgment has been filed in the office of the clerk of said court or before any judge thereof. [Amendment, approved Mar. 13, 1899; L. 1899, p. 146.]

§ 5350. Provisional remedies — Attachment.—Under Ballinger's Code, section 5350, an attachment may issue in an equitable action, when the object of the action is to recover a specified amount of money: *Rohrer v. Snyder*, 29 Wash. 199, 69 Pac. 748.

§ 5351. Affidavit—Grounds for.—Code of Procedure, section 289, subdivision 9, allowing an attachment when the damages for which the action is brought are for injuries arising from the commission of some felony or for the seduction of some

female, warrants the issuance of the writ in civil actions against an agent for embezzlement. An affidavit in attachment is sufficient to support the writ, under a statute allowing it in cases of felony, where the affidavit alleges that defendant was the agent of plaintiff under a contract by which defendant was intrusted with goods for sale upon a stipulated commission, that title was to remain in plaintiff and the proceeds of sales belong to him, and remittance thereof made at stated intervals; and that defendant converted

the moneys so received to his own use and thereby committed the crime of larceny by embezzlement: *Brandenstein v. Way*, 17 Wash. 293, 49 Pac. 511.

For debt secured by mortgage by waiver of lien.—The fact that a mortgagee waived his mortgage, and, in a suit upon the notes given by the mortgagor, attached other land than the mortgaged premises, would not affect the validity of the attachment proceedings: *Krutz v. Batts*, 18 Wash. 460, 51 Pac. 1054.

An attachment may issue in an equitable action, when the object is to recover a specified amount of money, under Ballinger's Code, section 5350, providing that the plaintiff at the time of commencing an action, or at any time afterward before judgment, may have the property of the defendant attached. The act of 1854 as amended by Laws 1867, page 97, making the conversion of partnership funds grand larceny, having been repealed by implication by Laws 1873, page 251, which omitted such offense and declared that only crimes prescribed therein should be punished, an attachment will not issue on account of the conversion of partnership property, as the statutory provision awarding the writ on the ground of injuries arising from the commission of

some felony is inapplicable. The action of a partner in collecting debts due the firm and refusing or neglecting to charge himself therewith does not fall within the provisions of Ballinger's Code, section 5351, subdivision 8, authorizing attachment, where "the defendant has been guilty of a fraud in contracting the debt or incurring the obligation for which the action is brought": *Bingham v. Keylor*, 19 Wash. 555, 53 Pac. 729.

§ 5352. Attachment when debt is not due.—Where an action has been commenced upon a promissory note before maturity and the property of the maker attached, under Code of Procedure, section 290, which provides that an action may be commenced and the property of the debtor may be attached previous to the time when the debt becomes due, when nothing but time is wanting to fix an absolute indebtedness and when the debtor is about to dispose of his property with intent to defraud his creditors, a dissolution of such attachment causes an abatement of the action, and plaintiff is not entitled to judgment therein even though his note matures before hearing upon the motion to dissolve the attachment: *Augir v. Foresman*, 23 Wash. 595, 63 Pac. 201.

§ 5355. Attachment—Bond for.

Before the writ of attachment shall issue the plaintiff, or someone in his behalf, shall execute and file with the clerk a bond or undertaking, with two or more sureties, in the sum in no case less than three hundred dollars, in the superior court, nor less than fifty dollars in the justice court, and double the amount for which plaintiff demands judgment, conditional that the plaintiff will prosecute his action without delay and will pay all costs that may be adjudged to the defendant, and all damages which he may sustain by reason of the attachment, not exceeding the amount specified in such bond or undertaking, as the penalty thereof, should the same be wrongfully, oppressively or maliciously sued out. With said bond or undertaking there shall also be filed the affidavit of the sureties, from which it must appear that such sureties are qualified and that they are, taken together, worth the sum specified in the bond or undertaking, over and above all debts and liabilities, and property exempt from execution. No person not qualified to become bail upon arrest shall be qualified to become surety upon a bond or undertaking for an attachment: Provided, That when it is desired to attach real estate only, and such fact is stated in the affidavit for attachment and the ground of attachment is that the defendant is a foreign corporation or is not a resident of the state, or conceals himself so that the ordinary process of law cannot be served upon him, or has absconded or absented himself from his usual place of abode, so that the ordinary process of law cannot be served upon him, the writ of attachment shall issue without bond or undertaking by or on behalf of the plaintiff: And provided further, That when the claim, debt or obligation, whether in contract or tort, upon which plaintiff's cause of action is based, shall have been assigned to him, and his immediate or

any other assignor thereof retains or has any interest therein, then the plaintiff and every assignor of said claim, debt or obligation who retains or has any interest therein, shall be jointly and severally liable to the defendant for all costs that may be adjudged to him and for all damages which he may sustain by reason of the attachment, should the same be wrongfully, oppressively or maliciously sued out. [Amendment, approved Mar. 6, 1903; L. 1903, p. 48.]

§ 5357. Suit on bond—Damages.—An action on an attachment bond is premature, where an appeal from the final judgment is pending, involving an interlocutory order dissolving the attachment, as the provision of Code of Procedure, section 295 (Bal. Code, § 5357), authorizing an action on the bond before the principal suit is determined, is repealed by Laws 1893, page 119, section 1, subdivision 1 (Bal. Code, § 6500), providing that an appeal from a final judgment shall bring up for review any order made in the same action or proceeding, either before or after judgment, in case the record presents it sufficiently for the purpose of review: *Maxwell v. Griffith*, 20 Wash. 106, 54 Pac. 938.

Attorney's fee in.—The attorney's fee received in proceedings for the dissolution of an attachment, as distinguished from the attorney's fee for the action on the bond, which Code of Procedure, section 295 (Bal. Code, § 5357), provides shall be fixed by the court, is a matter of damages to be submitted to the jury in an action on the attachment bond: *Id.*

Under the statutes governing attachment proceedings the lien of an attachment continues upon the property seized until it has been applied in satisfaction of the judgment rendered in the action, and such lien is not nullified or destroyed by the subsequent issuance of an execution on the judgment; hence, parties who have given the sheriff a bond indemnifying him against any damage or loss by reason of his seizure and retention of property under attachment, cannot escape responsibility by asserting that whatever damage accrued to the sheriff, where both a writ of attachment and a writ of execution had been issued, was by reason of the sale under the latter: *Van de Vanter v. Davis*, 23 Wash. 693, 63 Pac. 555.

§ 5359. Writs to different counties.—Under Ballinger's Code, section 5359, and 5380, the dissolution of an attachment on one ground is not res judicata when a new or amended affidavit sets up an entirely new ground for the writ: *Bingham v. Kevlor*, 25 Wash. 157, 64 Pac. 942.

§ 5362. Writs—Mode of executing.—The filing of a writ of attachment in the county auditor's office is not constructive notice to one who subsequently acquires rights under a grantee of the attachment debtor: *Johnson v. Irwin*, 16 Wash. 652, 48 Pac. 345.

§ 5367. Attachment of money in hands of officer.—Laws 1885-86, page 43, section 19 (Bal. Code, § 5367), which provides that a sheriff or constable may be garnisheed for money of the defendant in his hands, was not repealed by the later enactment on the subject of garnishments, when such subsequent act (Laws 1893, p. 95) contained no provision respecting the garnishment of public officers, and its repealing clause merely provided that "all acts and parts of acts in conflict with this act be and the same hereby are repealed": *Pierce v. Com. Inv. Co.*, 30 Wash. 22, 70 Pac. 496.

§ 5376. Discharge on motion.—Where two writs of attachment have been issued in the same action and levied upon the same property, an order of dissolution made after both levies has the effect of dissolving both, unless it clearly appears that the order of dissolution was limited to one of the writs: *Penn. Mortg. Inv. Co. v. Gilbert*, 18 Wash. 667, 52 Pac. 246.

§ 5377. Motion to discharge—Procedure.—Where a motion to discharge an attachment is presented, supported by affidavits challenging the existence of the grounds upon which the attachment has issued, it becomes the duty of the plaintiff to establish one or more of such grounds by a fair preponderance of the evidence at the hearing: *Bender v. Rinker*, 21 Wash. 633, 59 Pac. 503.

§ 5380. Liberal construction—Amendments.—A supplemental affidavit in aid of attachment should be stricken from the record on appeal, when it was not filed in the lower court until after the appeal had been taken, as Code of Procedure, section 322, allowing amendments of that character applies only to proceedings during the trial: *Brandenstein v. Way*, 17 Wash. 293, 49 Pac. 511.

Writs to different counties.—Under Ballinger's Code, section 5359, and 5380, the dissolution of an attachment on one ground is not res judicata when a new or amended affidavit sets up an entirely new ground for the writ: *Bingham v. Kevlor*, 25 Wash. 157, 64 Pac. 942.

§ 5390. Of garnishment—Motion to quash.—Where a writ of garnishment has been issued upon a judgment, the filing of a complaint in intervention by the judgment debtor, which is equivalent to a petition to the court to recall and quash the writ of garnishment, raises a question for the court, and not for a jury, to deter-

mine whether sufficient grounds exist for the exercise of such a power: *Gaffney v. Megrath*, 23 Wash. 476, 63 Pac. 520.

Service of writ—Waiver.—The fact that a private individual, when serving a writ of garnishment upon the sheriff, requested an acceptance in writing, which was refused, and afterward, upon the sheriff's suggestion, has service made by the coroner, does not prove a waiver of the original service: *Russell v. Millett*, 20 Wash. 212, 55 Pac. 44.

By whom served.—Under the statutes of this state (Code 1881, sec. 2776, as amended by Laws 1897, p. 21; and Code Proc., § 796), where the sheriff of a county is disqualified from acting by reason of being a party to the action, a writ of garnishment may be served upon him by a private individual: *Id.*

What is subject to.—Where the case in which a receiver was appointed has been settled or dismissed and no further duty remains to the receiver than to turn over the money and property held by him to

the parties entitled thereto, the property in his hands as receiver is liable to garnishment: *Id.*

Property under lease not subject to garnishment.—Under the garnishment act of 1893, personal property of a debtor held under a bona fide lease by a third party cannot be garnished during the existence of the lease: *Drake v. Catlin*, 18 Wash. 316, 51 Pac. 396.

Venue of action in.—Under the statute relative to garnishments (Laws 1893, p. 95), the garnishment issue is auxiliary to the main action and is properly heard where the main action is tried: *Title Guarantee etc. Co. v. Seattle Theatre Co.*, 23 Wash. 517, 63 Pac. 212.

Ballinger's Code, section 4854, which provides that actions against a corporation shall be brought in the county where it has an office for the transaction of business, is applicable to original actions, and does not relate to garnishment proceedings in which the corporation is made a garnishee defendant: *Id.*

§ 5396. Dating and Testing.

The writ of garnishment shall be dated and tested [attested] in like manner as the writ of attachment and the name and office address of the plaintiff's attorney shall be indorsed thereon or in case the plaintiff has no attorney, then the name and address of the plaintiff shall be indorsed thereon and delivered by the clerk who issues it to the plaintiff or his attorney. [Amendment, approved Mar. 12, 1903; L. 1903, p. 91.]

§ 5397. Service of Writ.

The writ of garnishment may be served by the sheriff or any constable of the county in which the garnishee lives or it may be served by any citizen of the state of Washington over the age of twenty-one years and not a party to the action in which it is issued in the same manner as a summons in an action is served. And in case such writ is served by an officer, such officer shall make his return thereon showing the time, place and manner of service and noting thereon his fees for making such service and shall sign his name to such return. In case such service is made by any person other than an officer, such person shall attach to the original writ his affidavit showing his qualifications to make such service and the time, place and manner of making service, but no fee shall be allowed for the service of such writ unless the same is served by an officer. [Amendment, approved Mar. 12, 1903; L. 1903, p. 91.]

§ 5398. Effect of service of writ.—In an action against one party, a debt due such party and another person jointly may be reached by garnishment to the extent of the principal defendant's interest therein for the purpose of satisfying his individual debt. Where the object of a garnishment proceeding is to reach the indebtedness due by the garnishee to the principal defendant and another jointly, such other joint creditor should be made a party to the proceeding, in order that

the rights of all persons interested in the subject matter of the garnishment proceedings may be duly determined and protected: *Moore v. Gilmore*, 16 Wash. 123, 58 Am. St. Rep. 20, 47 Pac. 239. See, also, sections 5367, 5368.

The action of the court in striking out an answer setting up that defendant had been garnished for the indebtedness sued on in favor of a creditor of the plaintiff is not erroneous, when the answer itself shows that no answer had been made by

the defendant in the proceeding in which he had been garnisheed: *Conner v. Scott*, 16 Wash. 371, 47 Pac. 761.

Where moneys are deposited with a justice of the peace by another than defendant, as security for the appearance of defendant at the time set for his preliminary examination, the presumption arises that such moneys belong to the one so depositing them and not to the defendant: *McAlmond v. Bevington*, 23 Wash. 315, 63 Pac. 251.

A deposit of money in court, in the interest of a defendant charged with crime, and for the purpose of security for his subsequent appearance, does not become the property of the defendant so as to

be subject to garnishment by his judgment creditor after its release as security, when the money so deposited in reality belonged to the party depositing it and not to the defendant: *Id.*

Under Ballinger's Code, sections 5398, 5406-5408, recognizing the right of a judgment creditor to garnishee a corporation in which the judgment debtor is the owner of shares and providing how such shares may be sold and the effect of such sale, such shares may be sold on execution to the extent of the judgment debtor's interest, although held either under a pledge or a pooling agreement: *Hardin v. White Swan Min. etc. Co.*, 26 Wash. 584, 67 Pac. 236.

§ 5398½. Release of, by Bond.

That an act entitled "An act in relation to garnishments," approved March 8th, 1893, be amended by adding thereto a new section immediately following section 9, said new section to be numbered section 9½, and to read as follows, to wit: Section 9½. If the defendant in the principal action, cause a bond to be executed to the plaintiff with sufficient sureties, to be approved by the officer having the writ or garnishment, or after the return of said writ, by the clerk of the court out of which said writ was issued, to the effect that he will perform the judgment of the court: The writ of garnishment shall, upon the filing of said bond with the clerk, be immediately discharged, and all proceedings had thereunder shall be vacated: Provided, That the garnishee shall not be thereby deprived from recovering any costs in said proceeding, to which he would otherwise be entitled under this act. [Approved Mar. 16, 1903; L. 1903, p. 282.]

§ 5400. **Defense of garnishee for defendant's interest.**—Where an action is brought in this state against an insolvent foreign corporation, for which a receiver has been appointed in a foreign jurisdiction, to whom all its assets have been assigned, and a writ of garnishment has been issued against a resident debtor of the corporation to recover upon a note and mortgage, such corporation cannot by special appearance move to quash the writ of garnishment, as whatever interest it has in the mortgage debt may be asserted in conjunction with the defense to the garnishment set up by the payors of the note: *Prussian Ins. Co. v. Northwest etc. Ins. Co.*, 19 Wash. 282, 53 Pac. 158.

§ 5404. **Decree to deliver effects.**—A corporation which conducts a safe deposit vault business by renting to individuals

boxes in the vault which can only be opened by the use of two keys—one a master's key, in the possession of the corporation and the other a private key, in the possession of the renter of the box—is subject to garnishment in an action against the latter, under Ballinger's Code, section 5404: *Trowbridge v. Spinning*, 23 Wash. 49, 83 Am. St. Rep. 806, 62 Pac. 125.

§ 5409. **Traverse of answer by affidavit.**—Where garnishees answer that they have no property of the principal defendant, a controverting affidavit that they bought a stock of goods in bulk from defendant under circumstances prohibited by statute sufficiently raises an issue: *McDaniells v. Connelly*, 30 Wash. 549, 71 Pac. 37.

§ 5412. Exemption of Wages from Garnishment.

Current wages or salary to the amount of one hundred dollars for personal services rendered by any person having a family dependent upon him for support, shall be exempt from garnishment, and where it appears upon the trial, or by answer of the garnishee, when not controverted as hereinafter provided, that the garnishee is indebted to the defendant for such current wages or salary

for an amount not exceeding one hundred dollars, the garnishee shall be discharged as to such indebtedness; that if the garnishment be founded upon a debt for actual necessities furnished to the defendant or his family, no exemption shall be allowed in excess of ten dollars per week for four consecutive weeks. The provisions of this section shall apply to actions in the superior court or before justices of the peace. [Amendment, approved Mar. 18, 1901; L. 1901, p. 294.]

§ 5418. Claim and delivery.—The owner of lands, who is not in possession thereof, cannot maintain replevin for the recovery of saw logs severed from the land by one in adverse possession thereof under claim of right: *Clarke v. Clyde*, 25 Wash. 661, 66 Pac. 10.

In an action of claim and delivery, in which the right of possession of certain personal property is in issue, the ownership being admittedly in plaintiff, plaintiff should be nonsuited where the only evidence introduced by it showed possession in defendant, that the property had been consigned to defendant to sell on commission, and the value of same, and there was nothing showing wrongful detention: *Dodds v. Williams-Smithson Co.*, 27 Wash. 89, 67 Pac. 352.

Possession by defendant necessary to sustain case.—Where in an action of replevin it appears that the defendant was not in possession of the property claimed at the time of demand or the commencement of the action, plaintiff cannot recover; and the fact that in such an action a recovery of the value of the property is sought, in case delivery cannot be had, would not warrant plaintiff in treating the action as one for the conversion of the property: *Dow v. Dempsey*, 21 Wash. 87, 57 Pac. 355.

§ 5423. Exceptions to sureties on bond of plaintiff.—Where, in an action to recover the possession of personal property, brought in a justice's court, the property has been delivered to plaintiff upon his giving bond therefor, and exception has been taken to the sufficiency of the sureties, the failure of the sureties to justify upon notice exonerates them from any further liability on the bond: *Rinear v. Skinner*, 20 Wash. 541, 56 Pac. 24.

§ 5432. Injunction — When granted.—Where an action involves the title to real estate in the possession of defendant under claim of title, and a *lis pendens* notice has been filed by plaintiff at the time of commencing the action, plaintiff is not entitled to an injunction against defendant to restrain a transfer of the property pending the suit. Even if the filing of a *lis pendens* notice would not operate as a complete protection of the rights of plaintiff, he would not be entitled to an injunction, unless he could show by proof that defendant was threatening to trans-

fer, or in some way interfere with, the title to the property, or inflict some irreparable injury thereto: *City of Spokane v. Amsterdamsch Trustees Kantoor*, 18 Wash. 81, 50 Pac. 1088.

Injunction will lie to restrain proceedings under an execution improvidently issued, or wrongfully levied, when that affords a more complete and speedy remedy than that afforded by an action at law: *Grant v. Cole*, 23 Wash. 542, 63 Pac. 263.

One who has paid a substantial portion of the purchase price for real property held by him under contract of purchase has such an interest in the land as will entitle him to maintain injunction, where the public authorities seek to take the same for a public use without first making compensation therefor: *Olson v. Seattle*, 30 Wash. 687, 71 Pac. 201.

Where land included in a railroad right of way across plaintiff's premises has been taxed to him he is entitled to a pro tanto reduction of his tax in an action under our statute to enjoin its collection: *Coolidge v. Pierce County*, 28 Wash. 96, 68 Pac. 391.

Where a tract of land belonging to an individual lies partly within and partly without the corporate limits of a municipality, improvements on the land situated outside the city limits are not subject to city taxes, and where from the records it is impossible to ascertain the just proportions for purposes of correction, the tax will be held void: *Id.*

§ 5433. Against malicious erection of structures.—A fence is a "structure," within the meaning of Ballinger's Code, section 5433, which provides that "an injunction may be granted to restrain the malicious erection by any owner or lessee of land, of any structure intended to spite, injure, or annoy an adjoining proprietor": *Karasek v. Peier*, 22 Wash. 419, 61 Pac. 33.

Ballinger's Code, section 5433 is not unconstitutional on the ground of authorizing the taking of one's property without just compensation, since it is merely an exercise of the police power of the state, intended to prohibit the erection of such structures only as are primarily or solely intended to injure or annoy an adjoining owner, and which serve no really useful or reasonable purpose: *Id.*

In order to warrant the issuance of an injunction under a statute authorizing the court to restrain the malicious erection of structures on one's own land, made for the purpose of annoying an adjoining owner, malevolence must be shown as the dominating motive: *Id.*

§ 5435. Notice of application for—Emergency.—A defendant in a divorce suit is not guilty of contempt for which he is punishable in violating an injunctive order of the court against his in any manner disposing of the property belonging to the parties to the suit, when the injunction was granted by the court without notice, or any showing of necessity therefor, and when the order failed to make any provision for notice or give any opportunity for a hearing: *In re Groen*, 22 Wash. 53, 60 Pac. 123.

§ 5442. Who bound by.—Where the court has issued its order restraining a domestic corporation, which is a party defendant to the suit and duly served, from delivering certain shares of stock within its custody to a codefendant, who was a nonresident upon whom only constructive service had been had, such shares of stock thereby came under the dominion of the court, and it had jurisdiction to dispose of them by its judgment, which would include defendants constructively served: *Jennings v. Mining Co.*, 29 Wash. 726, 70 Pac. 136.

§ 5456. Receivers—When appointed.—Although the object in obtaining a receivership for a corporation may be to hinder and delay its creditors, such creditors are estopped from attacking the proceeding as fraudulent, when they have acquiesced therein for months, had dealings with the receiver subsequent to his appointment, and have filed their petitions in the receivership proceeding seeking the enforcement of their claims out of the trust funds. Where bondholders have obtained the appointment of a receiver for an insolvent corporation upon the condition that the receiver pay all amounts due for supplies and materials purchased and used in operating the corporate property, and the receiver so appointed has continued to operate the business for a couple of years the same as it had been conducted prior to his appointment, the creditors who have furnished supplies and materials used in the maintenance of property are entitled to a preference over the bondholders, such as is accorded in the case of railway receiverships: *Manhattan Trust Co. v. Seattle Coal etc. Co.* 16 Wash. 499, 48 Pac. 333, 737.

The appointment of a receiver pendente lite is a matter within the sound discretion of the trial court, and its action will not be interfered with on appeal, when it is a question of the mere weight of evidence. The interposition of a sworn an-

swer denying all the equities of plaintiffs' complaint, which entitles them to the appointment of a receiver pendente lite, will not raise a prima facie case in favor of defendants, unless such answer is full and responsive to all the material allegations of the complaint. Where the property of a corporation is being mismanaged, and is in danger of being lost to the stockholders and creditors through the collusion and fraud of its officers and directors, or mismanagement and waste, courts of equity have inherent power to appoint receivers: *Cameron v. Groveland Imp. Co.*, 20 Wash. 169, 72 Am. St. Rep. 26, 54 Pac. 1128.

In foreclosure of mortgages of land this provision held to be repealed by decision in *Norfor v. Busby*, 19 Wash. 450, 53 Pac. 715.

Under the statutes of this state, giving the mortgagee the right of possession of the mortgaged premises until foreclosure sale, the appointment of a receiver in foreclosure proceedings is unwarranted. An order appointing a receiver pending suit is interlocutory, and, until the case is terminated by final judgment, the court retains jurisdiction to vacate any previous order improvidently made: *Balfour-Guthrie Investment Co. v. Geiger*, 20 Wash. 579, 56 Pac. 370.

In an action to foreclose a mortgage upon an elevator system, the mortgagor, a corporation, is entitled to the appointment of a receiver, where it had turned the system over to the mortgagee, authorizing the latter to operate it and apply the profits to the payment of the mortgage debt, although the mortgagee, in the operation of the business, placed one of the mortgagor's chief officers in charge thereof, who, by reason of speculation and the adoption of illegitimate business methods, lost money, since such officer was the agent of the mortgagee, even if largely interested in the mortgagor corporation: *Sibson v. Hamilton etc. Co.*, 21 Wash. 362, 58 Pac. 219.

In real actions.—The appointment of a receiver is unwarranted in an action involving the title, and right to rents and profits, of certain real estate, when the legal title thereto is claimed by both plaintiffs and defendants: *Sengfelder v. Hill*, 16 Wash. 355, 58 Am. St. Rep. 36, 47 Pac. 757.

A plaintiff is not entitled to have a receiver of real estate appointed pending action against a defendant in possession under claim of title, even if there appears strong probability of the plaintiff ultimately establishing his title thereto, when it appears that defendant is properly caring for the buildings and improvements on the land, that he is solvent and capable of responding in damages for any loss of rents and profits likely to be sus-

tained by the plaintiff, or that he is willing and able to execute a sufficient bond to account for the rents received from the property during the litigation. A receiver pendente lite should not be appointed, upon motion of plaintiff, to take possession of real estate in controversy, which is in the possession of defendant under a claim of title, when it is not made to appear both that plaintiff has a strong ground of title, with a reasonable probability of ultimately prevailing, and that there is imminent danger to the property or to its rents and profits, in case the court does not interfere: *Spokane v. Amsterdamsch etc.*, 18 Wash. 81, 50 Pac. 1088.

For insolvent corporations.—Where it appears that the available assets of a domestic insurance corporation consisted only of certain demand notes executed by its officers and \$1.40 in cash, that there were unadjusted losses aggregating between twelve and thirteen hundred dollars, on which there was an admitted liability of \$960, and that the company relied upon the payment of quarterly dues by its policy holders to meet such liabilities and to pay its current expenses, a finding that the company was insolvent, and a judgment decreeing its dissolution and appointing a receiver to wind up its affairs, is warranted by the evidence: *State v. Indemnity Assn.*, 18 Wash. 514, 52 Pac. 234.

The appointment of a receiver for an insolvent corporation is authorized under Ballinger's Code, section 5456, which provides therefor, "when a corporation has been dissolved, or is insolvent, or is in imminent danger of insolvency, or has forfeited its corporate rights": *New York Bank v. Metropolitan Bank*, 28 Wash. 553, 68 Pac. 905.

A creditor who has a valid claim has a right to enforce it against an insolvent corporation through a receiver authorized by the court to collect its assets, instead of being required to sue individual stockholders: *Id.*

An action by the receiver of a bank will, in the absence of any allegation of the insolvency or indebtedness of the bank, be treated as though it was brought directly by the bank, as under Code of Procedure, section 326, a receiver may be appointed for other purposes than the winding up of an insolvent concern; consequently, any defense good against the bank would be good against the receiver: *Shuey v. Holmes*, 20 Wash. 13, 54 Pac. 540.

Under the laws of this state authorizing the courts to appoint receivers of corporations which are insolvent, or in imminent danger of insolvency, with a view to rendering the insolvent estate a trust fund for the benefit of all credi-

tors, ratably and equally, the courts retain jurisdiction over such corporations until they may be adjudged bankrupt under the law of Congress, by the proper tribunal: *State v. Superior Court King Co.*, 20 Wash. 545, 56 Pac. 370.

The action of the trial court in refusing to grant an application for a receiver pendente lite, in a suit for an accounting and the dissolution of a corporation, is not an abuse of the discretion reposed in the court in such matters, where it does not appear that the property of the corporation is endangered, nor that its business is being diverted from the purpose for which it is incorporated, nor that the property is not being economically managed, nor that the applicant has displayed diligence in applying for relief, and where it appears that the only showing made is the denial of plaintiff's right to inspect the corporate books on the ground of his not having paid his subscription to the capital stock: *Ridpath v. Sans Poil etc. Transp. Co.*, 26 Wash. 427, 67 Pac. 229.

§ 5460. Deposits in court.—Is inapplicable to property held by an officer by virtue of his office, such as money, books, and insignia of office, which are held by a tenure different from that of a mere trustee: *State ex rel. v. Superior Court*, 28 Wash. 404, 68 Pac. 865.

§ 5500. Real actions—Who may maintain.—Where the interest of a devisee has been sold under execution against him, an action to quiet title may be maintained by a trustee charged under the will with the duty of administering the property as an entirety until the majority of the minor heirs, for the purpose of attacking the validity of the judgment upon which the execution sale was based: *Christofferson v. Pfennig*, 16 Wash. 491, 48 Pac. 264.

Under the settled policy of our national government from its inception in granting to the various states and territories sections 16 and 36 of the public lands in each township for common school purposes, and indemnity lands in case such sections had been settled upon prior to the survey by bona fide settlers, the grant contained in section 10 of the act enabling the territory of Washington to set up a state government must be construed as including such indemnity lands as had been selected under prior acts of Congress, although specifically naming no other sections than those numbered 16 and 36, but providing that "where such sections, or any parts thereof, have been sold or otherwise disposed of by or under the authority of any act of Congress, other lands equivalent thereto, in legal subdivisions of not less than one quarter section, and as contiguous as may be to the section in lieu of which the same is taken, are here-

by granted to said state for the support of common schools''; and under such grant the state is vested with an equitable title to such indemnity lands selected by it as will warrant it in maintaining the statutory action for possession under Ballinger's Code, sections 5500, 5508, against an intruder thereon: *State v. Johanson*, 26 Wash. 668, 67 Pac. 401.

§ 5501. Limitations.—Where an action is brought under Ballinger's Code, sections 5500, 5501, both for possession and the quieting of title, the limitation upon such actions of seven years specially provided therein governs: *Krutz v. Isaacs*, 25 Wash. 566, 66 Pac. 141.

• Under Ballinger's Code, sections 5500, 5501, in an action for the recovery of the possession of real estate, the statute of limitations would not begin to run against plaintiff until his actual ouster and the taking possession of the premises by defendants, where possession was not taken until some time subsequent to the sheriff's sale: *Id.*

§ 5508. Ejectment—Pleading by plaintiff.—In an action by a tenant against a subtenant of premises, it is sufficient for the plaintiff to allege that he is the lessee of the premises, without deraigning his title: *Harris v. Halverson*, 23 Wash. 779, 63 Pac. 549.

Where a tenant refuses to give up possession at the expiration of his term, an action may be maintained against him by a lessee whose term immediately follows: *Id.*

The complaint in an action of ejectment states a cause of action against all the defendants instead of but one, when it avers they are all in possession, and further avers that one of them claims his right to possession by virtue of a tenancy from the others, but does not allege that he is in exclusive possession or that he claims such right: *Murray v. Briggs*, 29 Wash. 245, 69 Pac. 765.

In an action to restrain trespass and quiet title to certain lands, the description of the lands in the complaint is sufficiently definite when it shows where the land is located and is sufficient to enable

the boundaries to be readily traced on the ground: *Maggs v. Morgan*, 30 Wash. 605, 71 Pac. 188.

Superior title prevails.—Where it is admitted by the pleadings in an action of ejectment that the defendants are jointly in possession, and that one of them claims to hold under the others as their tenant, the terms of the tenancy are not material, and hence the rejection of evidence bearing thereon would not constitute error: *Murray v. Briggs*, 29 Wash. 245, 69 Pac. 765.

In an action of ejectment it is not error to refuse the admission in evidence of a deed to defendant's grantor from one who never had the legal title to the premises, and who had parted with whatever equitable interest he had therein prior to the execution of the deed: *Id.*

A deed which fails to identify the property cannot be given in evidence in an action of ejectment in order to prove defendant's title, although an offer is made to show a mistake in the description; it could not be rendered competent as evidence until reformed in a proceeding brought for that purpose: *Id.*

§ 5509. Defendant must plead title—Character and duration.—In an action involving the title to real estate, in which the plaintiff has failed to fully plead title, the defendant may, under general denial, introduce any legal evidence that tends to defeat plaintiff's title: *Carheek v. National Bank*, 16 Wash. 399, 47 Pac. 884.

§ 5511. Damages—Improvements as set-off.—Where real property is recovered in an action of ejectment, permanent improvements placed thereon, in good faith, by the defendant or those under whom he claims, follow the land, and under Ballinger's Code, section 5511, defendant is not entitled to recover the value thereof, but is merely entitled to set off the value thereof at the time of trial against such damages as the plaintiff may be entitled to for the withholding of the property: *Sengfelder v. Hill*, 21 Wash. 371, 58 Pac. 250.

§ 5511a. Actions to Recover Lands—Occupant's Claim for Improvements.

Who Entitled to Make Claim.

In an action for the recovery of real property upon which permanent improvements have been made or general or special taxes or local assessments have been paid by a defendant, or those under whom he claims, holding in good faith under color or claim of title adversely to the claim of plaintiff, the value of such improvements and the amount of such taxes or assessments with interest thereon from date of payment must be allowed as a counterclaim to the defendant.

What Shall be Set Forth by Claimant.

The counterclaim shall set forth the value of the land apart from the improvements, and the nature and value of the improvements apart from the land and the amount of said taxes and assessments so paid, and the date of payment. Issues shall be joined and tried as in other actions, and the value of the land and the amount of said taxes and assessments apart from the improvements, and the value of the improvements apart from the land must be specifically found by the verdict of the jury, report of the referee, or findings of the court as the case may be.

Nature of Judgment Upon.

If the judgment be in favor of the plaintiff for the recovery of the realty, and of the defendant upon the counterclaim, the plaintiff shall be entitled to recover such damages as he may be found to have suffered through the withholding of the premises and waste committed thereupon by the defendant or those under whom he claims, but against this recovery shall be offset pro tanto the value of the permanent improvements and the amount of said taxes and assessments with interest found as above provided. Should the value of improvements or taxes or assessments with interest exceed the recovery for damages, the plaintiff shall, within two months, pay to the defendant the difference between the two sums and upon proof, after notice, to the defendant, that this has been done, the court shall make an order declaring that fact, and that title to the improvements is vested in him. Should the plaintiff fail to make such payment, the defendant may at any time within two months after the time limited for such payment to be made, pay to the plaintiff the value of the land apart from the improvements, and the amount of the damages awarded against him, and he thereupon shall be vested with title to the land, and, after notice to the plaintiff, the court shall make an order reciting the fact and adjudging title to be in him. Should neither party make the payment above provided, within the specified time, they shall be deemed to be tenants in common of the premises, including the improvements, each holding an interest proportionate to the value of his property determined in the manner specified in section two hereof: Provided, That the interest of the owner of the improvements shall be the difference between the value of the improvements and the amount of damages recovered against him by the plaintiff.

All acts and parts of acts in conflict with this act are hereby repealed. [Approved Mar. 16, 1903; L. 1903, p. 262.]

§ 5516. Mortgagees not entitled to possession.—Under Laws 1869, page 130, section 498, modifying the common-law mortgage to a mere security, and giving the mortgagee the right of possession till foreclosure sale, the statute of 1854 (Laws 1854, p. 162) authorizing the appointment of receivers in actions for the foreclosure of mortgages must be construed as repealed by implication: *Norfor v. Busby*, 19 Wash. 450, 53 Pac. 715.

§ 5521. Actions to quiet title—Possession necessary in action, when.—An action

to quiet title and remove a cloud from real property cannot be maintained by one who is not in possession; the proper remedy is by the statutory action in the nature of ejectment with the added incident of determining the paramount title: *Povah v. Lee*, 29 Wash. 108, 69 Pac. 639.

The fact that defendants in a suit to quiet title by one out of possession plead their own title, as required by Ballinger's Code, section 5509, would not constitute a waiver of their right to object that plain-

tiff had mistaken her remedy, when they do not ask for any affirmative relief in their answer: *Id.*

Any person in possession of land, although not the owner of the fee, may maintain an action for the purpose of quieting his title thereto, so as to avoid any uncertainty in his holding, under Ballinger's Code, section 5521, which provides that any person in possession of real property may maintain a civil action against any person claiming an interest in said real property, or any right thereto, adverse to him, for the purpose of determining such claim, estate or interest: *Bird v. Winyer*, 24 Wash. 269, 64 Pac. 178.

An equitable action to try title or remove clouds from title can be maintained under Ballinger's Code, section 5521, where the property is not in the actual possession of anyone; and such action, being purely equitable in its nature, is properly triable without the intervention of a jury: *Roher v. Snyder*, 29 Wash. 199, 69 Pac. 748.

Plaintiff is entitled to maintain an action to quiet title, brought under Ballinger's Code, section 5521, authorizing such action by one in possession by himself of his tenant, when the evidence shows a conveyance to him by the owner, who exercises no acts of dominion over the land subsequent to such conveyance; that an intending purchaser from plaintiff went into possession thereof under an agreement of sale, and built a house thereon, and no showing was made of any possession held adversely to plaintiff: *Bigelow v. Brewer*, 29 Wash. 670, 70 Pac. 129.

Residence upon land is unnecessary in order to establish actual possession; and actual possession is sufficiently set forth where the complaint alleges that "plaintiff is now and for more than fifteen years next prior to the date of this complaint has been, the owner in fee simple absolute and in the actual, notorious and open possession" of the lands in controversy: *Maggs v. Morgan*, 30 Wash. 605, 71 Pac. 188.

To remove lien of street assessment.—Under Code of Procedure, section 544, authorizing an action to quiet title against anyone claiming an interest in land adverse to the owner, such an action may be maintained for the removal of a street assessment as a cloud upon title, although the assessment is apparently barred by the statute of limitations: *Kinsman v. Spokane*, 20 Wash. 118, 72 Am. St. Rep. 24, 54 Pac. 934.

May be maintained by trustee.—A complaint states a cause of action which provides that any person in possession of real property may maintain a civil action against any person claiming an interest adverse to him, for the purpose of determining such claim, estate or interest,

when the complaint alleges that plaintiff is in possession of the realty described as a trustee of certain defendants, for the use and benefit of their creditors; that such defendants claim they are entitled to the premises, never having been divested of their title and interest in any way; and that the deed of trust given by them for the benefit of creditors did not convey the premises in controversy: *Watson v. Glover*, 21 Wash. 678, 59 Pac. 516.

§ 5527. Forcible detainer defined.—An action of unlawful detainer will lie against a tenant from month to month, who continues in possession after the end of a month, when notice to quit had been given to him more than twenty days prior thereto: *Yesler's Estate v. Orth*, 24 Wash. 483, 64 Pac. 723.

Notice to Quit.

Under Ballinger's Code, section 5527, notice served just twenty days prior to the end of the month or period, excluding the day of service, is sufficient: *McGuinness v. Gens*, 25 Wash. 490, 65 Pac. 755.

Under Ballinger's Code, section 5527, authorizing an action of unlawful detainer, where notice to quit has been served upon a tenant "more than twenty days prior" to the end of the month or period for which rent was reserved, it is sufficient to give twenty days' notice prior to the end of the month or period, excluding the day of service: *Ferguson v. Hoshi*, 25 Wash. 664, 66 Pac. 105.

Under Ballinger's Code, section 5527, subdivision 1, which provides that, in all cases where real property is leased for a specified term, the tenancy shall be terminated without notice at the expiration of such specified term, notice to vacate is unnecessary where by the terms of the lease the tenancy has expired: *Stanford Land Co. v. Steidel*, 28 Wash. 72, 68 Pac. 178.

§ 5528. Tenant of agricultural lands—Holding over term.—Where a tenant has continued in possession of agricultural lands for more than sixty days after the expiration of the term for which the premises were let to him, he is entitled, under Ballinger's Code, section 5528, to hold for another year, when he will again be guilty of unlawful detainer for a period of sixty days succeeding the end of that holdover year, but any notice prior to the end of his term is sufficient to authorize the bringing of the action of unlawful detainer: *Mounts v. Goranson*, 29 Wash. 262, 69 Pac. 743.

Service of the statutory notice to pay rent or quit is unnecessary, where the action is not one to terminate the lease on account of failure to pay rent, but is to terminate the lease at its expiration whether rent is paid or not: *Id.*

§ 5532. Complaint — When summons must issue.—The provision in the forci-

ble entry and detainer act (Bal. Code, § 5532), that upon filing the complaint a summons must be issued thereon as in other cases does not incorporate as a part of the act the procedure in force governing service of summons at the date of the passage of the act, but must be construed as having reference to the law in force at the time the summons is issued in an action of forcible entry and detainer: *Security Savings etc. Co. v. Hackett*, 27 Wash. 247, 67 Pac. 607.

In an action of unlawful detainer, the failure of the complaint to expressly set forth plaintiffs' right of possession and leasing of the premises to defendant, would not subject the complaint to demurrer, where the notice to quit, which was attached to and made a part of the complaint by reference, notified defendant, as the tenant in possession, to quit the premises which he held under a tenancy terminating on a date named, and notifying him if he remained in possession thereafter he would be ousted under the provisions of the law relating to unlawful detainer: *Quandt v. Smith*, 28 Wash. 664, 69 Pac. 369.

§ 5534. Writ of restitution—How obtained.—Section 5534, Ballinger's Code, authorizing the plaintiff, upon the institution of an action of forcible entry and detainer or of unlawful detainer, to secure a writ of restitution awarding him the possession of the realty in controversy pending action, upon his giving bond securing the defendant for costs and damages in case the defendant should recover judgment, is not unconstitutional as being a deprivation of property without due process of law, since the statute goes no further than to provide for the temporary possession of the property pending action: *State ex rel. Loan Society v. Prather*, 13 Wash. 337, 67 Am. St. Rep. 729, 53 Pac. 344.

§ 5535. Service of writ—Bond to stay execution of writ.—The bond given by defendants in an action of unlawful detainer, for the purpose of staying the execution of a provisional writ of restitution against them, is not superseded and rendered nugatory by a subsequent supersedeas bond given by defendants on appeal from a judgment against them: *Lowman v. West*, 18 Wash. 233, 51 Pac. 373.

§ 5536. Additional bond.—An amendment of the complaint in an action of unlawful detainer, subsequent to the giving of a bond to stay restitution pending the action, will not release the sureties upon the bond, when the amendment in nowise prejudices the sureties, and is made for the purpose of correcting an imperfection in the pleading, without changing the cause of action or introducing a new one. The giving by defendants in an action of unlawful detainer of a sec-

ond bond to stay restitution will not operate as a release of the sureties upon a prior bond, when such second bond is given for the purpose of additional security, and is ordered under the statutory provision permitting the court to increase the security required of defendants who remain in possession pending the action: *Lowman v. West*, 18 Wash. 233, 51 Pac. 373.

§ 5540. Proof required on behalf of plaintiff.—A landlord may maintain an action of unlawful detainer against a tenant holding over, although the landlord may have leased the premises to other parties (*Capital Brewing Co. v. Crosbie*, 22 Wash. 269, distinguished): *Schreiner v. Stanton*, 26 Wash. 563, 67 Pac. 219.

§ 5542. Verdict and judgment in.—The judgment of ouster in an action of unlawful detainer, does not become complete until the expiration of the five days, nor effect such a change in the interest or right of possession of the tenant, as to avoid a fire insurance policy during such period of five days, under a condition which provides that the entire policy shall be void, if any change take place in the interest, title or possession of the subject of insurance, whether by legal process or judgment or voluntary act of the insured: *Browne National Bank v. Southern Ins. Co.*, 22 Wash. 379, 60 Pac. 1123.

Defenses.

In an action of forcible entry and detainer, the defendants cannot, by way of cross-complaint, set up a claim for damages by reason of the wrongful issuance of the writ of restitution, but are relegated to an action on the bond given by plaintiff to secure such writ: *Owens v. Swanton*, 25 Wash. 112, 64 Pac. 921.

In an action of unlawful detainer, the tenant cannot set up the defense that he had a contract with the landlord whereby the latter, in case of his dispossession for any reason, should reimburse the tenant for furniture, fixtures and improvements before he should be compelled to vacate the premises, since the contract of tenancy and that of reimbursement are severable, and for the breach of the latter the tenant should be relegated to an action for damages instead of being allowed to interpose it as a defense to the summary action for possession permitted by the statute governing unlawful detainer: *Carmack v. Drum*, 27 Wash. 382, 67 Pac. 808.

The contract between the landlord and tenant for the purchase before dispossession by the former of the furniture placed on the premises by the latter being the subject matter of an independent action at law, such fact affords no ground of equitable interference by injunction to restrain the landlord from prosecuting an action of unlawful detainer, and therefore the pending of such equitable ac-

tion cannot be pleaded as an abatement of the unlawful detainer action: *Id.*

Double damages, when.—Double damages may be awarded against the defendant in an action of forcible entry and detainer, where there is substantially a claim for such damages stated in the complaint: *Hart v. Pratt*, 19 Wash. 560, 53 Pac. 711.

The court is warranted in giving judgment for double damages on the verdict in an action of unlawful detainer, where the verdict is general, according to a form prepared by the court, and no exception was taken thereto at the time of its submission to the jury, since under Ballinger's Code, section 5542, the court could pronounce judgment for double the amount of the verdict, as well as for a restitution of the premises: *Quandt v. Smith*, 28 Wash. 664, 69 Pac. 369.

§§ 5546-5548. **Appeal—Supersedeas.**—Under Ballinger's Code, sections 5546-5548, providing for appeals in actions of unlawful detainer, and that, if defendant appeals, he may have a stay of proceedings pending appeal, upon filing a bond therefor, which will stay all proceedings in the case, suspend any writ of restitution, and permit the defendant to remain in possession of the premises, until the determination of the appeal, it is the duty of the judge to fix the amount of a supersedeas bond staying the issuance and service of the writ of restitution, even if it appear from the pleadings in the case that the contract under which defendant claims possession has expired prior to his application for the stay of the writ: *State ex rel. Orth v. Benson*, 21 Wash. 580, 59 Pac. 501.

§ 5550. **Against trespassers—Complaint and answer.**—The fact that Ballinger's Code, section 5150, requires plaintiff in an action of unlawful detainer to incorporate an abstract of title in his complaint would not make a certified abstract admissible in evidence for the purpose of proving title, since *Id.*, section 6046, does not permit public records to be proved by the certificate of any other person than the officer having such record in his possession: *Roberts v. Center*, 26 Wash. 436, 67 Pac. 151.

The failure of defendant in an action of unlawful detainer to deny the paragraph of the complaint setting up an abstract of plaintiff's title is not an admission of its truth, where the answer denies plaintiff's title or right to possession, since such answer necessarily denies the abstract, which merely shows the chain of title under which plaintiff claims: *Id.*

Description of Premises.—Sufficiency of

A lease of certain premises described them as "the land actually occupied by R. L. McKenzie's old house, north of Johanna McKenzie's new house. Said

house is about thirty rods southeast of the old Kromer house on an unrecorded plat of lands south of Wall street and west of Rucker avenue, known as the Kromer tract, in the city of Everett, Snohomish county, Washington." In an action for unlawful detainer after the expiration of the lease, the complaint described the premises in the same terms as the lease. The defendants demurred to the complaint, alleging the insufficiency of the description. Held, that the description was sufficient, inasmuch as it gives the state, county and city, and the tract is described as bounded by well known streets in the city; especially where it is the same description under which defendants took possession of the premises and if sufficient for that purpose should be sufficient notice of what they were called upon to vacate: *Stanford Land Co. v. Steidle*, 28 Wash. 72, 68 Pac. 178.

In an action of unlawful detainer, it is unnecessary to allege that defendants unlawfully and wrongfully keep possession of the premises, where the complaint alleges the continuance in possession by defendants after the term specified in the lease: *Id.*

§ 5608. **Actions against state.**—The act authorizing actions against the state (Laws 1895, p. 188, Bal. Code, §§ 5608-5612), and providing that "any person or corporation having any claim against the state of Washington shall have the right to begin an action against the state in the superior court of Thurston county," having been passed for the purpose of giving effect to article 2, section 26, of the constitution, which provides that "the legislature shall direct by law in what manner and in what courts suits may be brought against the state," is remedial in its nature and entitled to a liberal construction; and, thus construed, the word "claim" used in the statute must be held to mean "cause of action." The act authorizing suits against the state by "any person having any claim against the state" does not restrict action to claims arising out of money demands due from the state, but is comprehensive enough to include actions in equity, such as one seeking to have a judgment lien of the state declared subject to a prior mortgage: *Northwestern etc. Bank v. State*, 18 Wash. 73, 50 Pac. 569, 586, 1023.

A statute permitting suits to be brought against a state does not of itself subject the state to a liability that did not exist before, but is merely a waiver of the state's immunity from suit: *Billings v. State*, 27 Wash. 228, 67 Pac. 583.

§ 5622. **Eminent domain—Damages—Imposition of additional burden.**—If an additional element of damage is imposed upon land appropriated under the power of eminent domain, which was not taken

into consideration by the jury in making their award in the condemnation proceedings, the owner cannot be deprived of damages therefor by reason of the prior condemnation. Where land has been condemned for the purpose of securing a right of way to lay and maintain a pipe line to connect a city's pumping station with its distributing station, in order to supply the inhabitants of the city with water, the erection of poles on such right of way and stretching wires from them for the construction of a telephone line between such stations, constitutes an additional burden, though the telephone line may be necessary for the proper operation and maintenance of the pipe line: *City of Spokane v. Colby*, 16 Wash. 610, 48 Pac. 268.

§ 5640. Court to determine necessity of appropriation.—In a condemnation proceeding to secure right of way for an irrigating canal, it is not necessary for the irrigation company to show that it has condemned or purchased water rights from the riparian owners of the stream it proposes to tap. Under the constitution and statutes of this state, the condemnation of lands for the construction of an irrigation ditch constitutes an appropriation for a public use. Courts will take judicial notice that irrigation is necessary in order to produce agricultural crops upon light sage-brush soil: *Prescott Irr. Co. v. Flathers*, 20 Wash. 454, 55 Pac. 635.

§ 5641. Elements of compensation—Improvements made by appropriator.—Where a railroad company has entered upon and appropriated land for right of way purposes, and has placed improvements thereon, in a subsequent proceeding by the corporation for the condemnation of the premises, it cannot be required to compensate the land owner for the value of such improvements: *Seattle etc. R. R. Co. v. Corbett*, 22 Wash. 189, 60 Pac. 127.

Evidence.—A large discretion is reposed in the trial court in the matter of allowing cross-examination of expert witnesses where market value is involved; and where such witnesses were allowed on direct examination to fix the value of a stone quarry condemned for a railroad right of way and the damages resulting from its appropriation, it was not error to permit cross-examination concerning the methods by which the witnesses arrived at their conclusions as to the injury, what elements of damages they had considered, and the reasons for their conclusions: *Seattle etc. R. R. v. Roeder*, 30 Wash. 245, 70 Pac. 498.

In an action to condemn lands for a right of way, it was not error to permit defendant's witnesses to segregate the lands sought to be appropriated and then place valuations upon the different par-

cels, especially where plaintiff was the first to pursue that course in arriving at a basis of compensation: *Id.*

A witness as to the value of a stone quarry and as to how it should be worked was qualified to testify when it was shown that he had owned and operated stone quarries, that he knew the quarry in controversy, had lived in its vicinity for thirteen years, had examined the property with reference to a purchase thereof, and was acquainted with its market value: *Id.*

In condemnation proceedings for the appropriation of a railroad right of way along a stone quarry, evidence is admissible for the purpose of showing that the most advantageous way to work the quarry is by blasting, and that this could not be done without great care and increased expense by reason of the proximity of the railroad: *Id.*

In such proceedings a lease of the quarry by the owners is admissible in evidence for the purpose of showing the royalty paid by a lessee for the stone, as tending to fix both the value of the land and of his leasehold interest: *Id.*

Measure of damages.—Evidence that a stone quarry had a market value in the county, but was probably not salable there because of the lack of local purchasers with money enough to pay for it, would not constitute prejudicial error, where the inquiry was as to the damages suffered by the appropriation of such quarry for railroad right of way: *Id.*

In condemnation cases the measure of damages is the fair market value of the land taken for railroad right of way at the time of the appropriation, together with the amount of depreciation, if any, in the value of the land not taken, and these respective amounts are to be ascertained without regard to any benefit that may result from the construction of the road: *Seattle etc. Ry. Co. v. Roeder*, 30 Wash. 246, 70 Pac. 498.

§ 5642. Judgment for damages, and decree of appropriation—Mortgagee's interest.—Under the statutes of this state, the decree of appropriation awarding damages in condemnation proceedings is for an interest in the land taken, and the holders of mortgage and judgment liens on such land at the time of its appropriation are entitled to share in the damages awarded to the extent and according to the priority of their liens: *Yakima Water Co. v. Hathaway*, 18 Wash. 378, 51 Pac. 471.

§ 5644. Disposition of award—Conflicting claims.—A mortgagee, who has failed to assert his rights to moneys awarded for condemnation of a portion of the mortgaged premises until after the expiration of the period allowed for redemption from a sale under foreclosure of his mortgage, is estopped from asserting any claim there-

to, but a mortgagee who has foreclosed and received a sheriff's deed to the premises is entitled, as against the mortgagor and junior claimants, to moneys subsequently paid for the appropriation of a portion of the mortgaged land, pursuant to condemnation proceedings instituted pending his acquisition of the full title.

An execution creditor is not entitled to share in an award paid as damages for the appropriation of real estate as against a mortgagee in possession of the property before suit by the execution creditor: *Commercial National Bank v. Johnson*, 16 Wash. 536, 48 Pac. 267.

§ 5645. Appeal.

Either party may appeal from the order of the court adjudicating or refusing to adjudicate that the contemplated use of the property sought to be appropriated is really a public use or a private use for a private way of necessity, and ordering or refusing to order a jury to be summoned for the assessment of damages, within thirty days after the entry of said order. Either party may also appeal from the judgment and decree of appropriation within thirty days after the entry of said judgment and decree, and such appeal shall bring before the supreme court the propriety and justness of the amount of damages in respect to the parties to the appeal, and also the legality, propriety and necessity of the appropriation: Provided, however, That no bonds shall be required of any person interested in the property sought to be appropriated by such corporation; but in case a corporation appropriating such land, real estate, premises or other property, is appellant, it shall give a bond like that prescribed in the next following section, to be executed, filed and approved in the same manner: And provided further, That if the owner of the land, real estate, premises or other property accepts the sum awarded by the jury, the court or the judge thereof, he shall be deemed thereby to have waived conclusively an appeal to the supreme court, and final judgment by default may be rendered in the superior court, as in other cases: And be it further provided, That the right of appeal herein given shall be applicable to and shall exist in all condemnation proceedings hereafter brought, now pending, and in which judgment has been rendered, and the time for appeal herein provided has not elapsed.

An emergency exists, and this act shall take effect immediately. [Amendment, approved Mar. 16, 1901; L. 1901, p. 213.]

§ 5645. **Appeal, question upon.**—Under Ballinger's Code, section 5643, which provides for the release and discharge of the corporation which has appropriated land from all further liability upon payment into court of the damages assessed "unless upon appeal the owner shall recover a greater amount of damages"; and under section 5645, which provides that either party may appeal from the judgment for damages entered in the superior court within thirty days after the entry of judgment, and such appeal shall bring before the supreme court the propriety and justice of the amount of damages, no question can be raised upon appeal in condemnation proceedings other

than as to the amount of damages: *Western American Co. v. St. Ann Co.*, 22 Wash. 158, 60 Pac. 158.

§ 5647. **Applicable to right of way already occupied.**—Under the statute of this state authorizing the appropriation by corporations of "all land, real estate, or other property" necessary in the conduct of their business, provided it be for a public use, one railroad may condemn for right of way purposes that portion of the right of way of another road which is not in use for railroad purposes, or necessary for the exercise of the latter's corporate franchises: *Seattle etc. R. R. Co. v. B. B. & E. R. R. Co.*, 29 Wash. 491, 92 Am. St. Rep. 907, 69 Pac. 1107.

§ 5651. Eminent Domain—Right of Granted to Electric Power Companies.

The right of eminent domain is hereby extended to all corporations incorporated or that may hereafter be incorporated under the laws of this state or any state or territory of the United States and doing business in this state for the purpose of transmitting electric power by wire, cable or by any other means; or for operating railways or railroads by electric power: Provided, however, That said right of eminent domain shall not be exercised with respect to any residence or business structure or structures, public road or street.

Every such corporation shall have the right to enter upon any land between the termini of the proposed lines for the purpose of examining, locating and surveying such lines, doing no unnecessary damage thereby.

Every such corporation shall have the right, subject to the proviso contained in section 1 hereof, to appropriate real estate or other property for right of way or for any corporate purposes in the same manner and under the same procedure as now is or may hereafter be provided by law in the case of other corporations authorized by the laws of this state to exercise the right of eminent domain. [Approved Mar. 13, 1899; L. 1899, p. 147.]

As to Highways.

The legislative authority of the city or town having control of any public street or road, or, where such street or road is not within the limits of any incorporated city or town, then the board of county commissioners of the county wherein such road or street is situated, may grant authority for the construction, maintenance and operation of transmission lines for transmitting electric power, together with poles, wires and other appurtenances, upon, over, along and across any such public street or road, and in granting such authority the legislative authority of such city or town, or the board of county commissioners, as the case may be, may prescribe the terms and conditions on which such transmission line and its appurtenances, shall be constructed, maintained and operated upon, over, along and across such road or street, and the grade or elevation at which the same shall be constructed, maintained and operated: Provided, That hereafter on application being made to the board of county commissioners for such authority, the board shall fix a time and place for hearing the same, and shall cause the county auditor to give public notice thereof at the expense of the applicant, by posting written or printed notices in three public places in the county seat of the county, and in at least one conspicuous place on the road or street part thereof, for which application is made, at least fifteen days before the day fixed for such hearing, and by publishing a like notice three times in some daily newspaper published in the county, or if no daily newspaper is published in the county, then the newspaper doing the county printing, the last publication to be at least five days before the day fixed for such hearing, which notice shall state the name or names of the applicant or applicants, a description of the roads or streets or parts thereof for which the application is made, and the time and place fixed for the hearing. Such hearing may be adjourned from time to time by order of the board. If after such hearing the board shall deem it to be for the public interest to grant such authority in whole or in part,

the board may make and enter the proper order granting the authority applied for or such part thereof as the board deems to be for the public interest, and shall require such transmission line and its appurtenances to be placed in such location on or along the road or street as the board finds will cause the least interference with other uses of the road or street. In case any such transmission line is or shall be located in part on private right of way, the owner thereof shall have the right to construct and operate the same across any county road or county street which intersects such private right of way, if such crossing is so constructed and maintained as to do no unnecessary damage: Provided, That any person or corporation constructing such crossing or operating such transmission line on or along such county road or county street shall be liable to the county for all necessary expense incurred in restoring such county road or county street to a suitable condition for travel.

As to Private Property.

Every corporation, incorporated or that may hereafter be incorporated under the laws of this state, or of any other state or territory of the United States, and doing business in this state, for the purpose of manufacturing or transmitting electric power, shall have the right to appropriate real estate and other property for right of way or for any corporate purpose, in the same manner and under the same procedure as now is or may hereafter be provided by law in the case of ordinary railroad corporations authorized by the laws of this state to exercise the right of eminent domain: Provided, That such right of eminent domain shall not be exercised with respect to any public road or street until the location of the transmission line thereon has been authorized in accordance with section one (1) of this act.

May Lease or Purchase Plants.

Any corporation incorporated or that may hereafter be incorporated under the laws of this state or any state or territory of the United States, for the purpose of manufacturing, transmitting or selling electric power, may lease or purchase and operate (except in cases where such lease or purchase is prohibited by the constitution of this state) the whole or any part of the plant for manufacturing or distributing electric power or energy of any other corporation, heretofore or hereafter constructed, together with the franchises, powers, immunities and all other property or appurtenances appertaining thereto: Provided, That such lease or purchase has been or shall be consented to by stockholders of record holding at least two-thirds in amount of the capital stock of the lessor or grantor corporation; and all such leases and purchases heretofore made or entered into by consent of stockholders as aforesaid are for all intents and purposes hereby ratified and confirmed, saving, however, any vested rights of private parties.

All acts and parts of acts in conflict with this act are hereby repealed; Provided, That this repeal shall not affect any proceeding now pending in any court, and any proceeding now pending may be prosecuted to completion under the acts heretofore in force. [Filed without approval, Mar. 17, 1903; L. 1903. p. 360.]

Amended: Chap. 97, Laws '07.
§ 5652. **Eminent Domain—Right of, Granted to Electric Railways.**

As to Highways.

The legislative authority of the city or town having control of any public street or road, or, where such street or road is not within the limits of any incorporated city or town, then the board of county commissioners of the county wherein such road or street is situated, may grant authority for the construction, maintenance and operation of electric railroads or railways, together with such poles, wires and other appurtenances, upon, over, along and across any such public street or road, and in granting such authority the legislative authority of such city or town, or the board of county commissioners, as the case may be, may prescribe the terms and conditions on which such electric railroad or railway, and its appurtenances shall be constructed, maintained and operated upon, over, along and across such road or street, and the grade or elevation at which the same shall be constructed, maintained and operated: Provided, That hereafter on application being made to the board of county commissioners for such authority, the board shall fix a time and place for hearing the same, and shall cause the county auditor to give public notice thereof at the expense of the applicant, by posting written or printed notices in three public places in the county seat of the county, and in at least one conspicuous place on the road or street or part thereof, for which application is made, at least thirty days before the day fixed for such hearing, and by publishing a like notice three times in some daily newspaper published in the county, or if no daily newspaper is published in the county, then the newspaper doing the county printing, the last publication to be at least five days before the day fixed for such hearing, which notice shall state the name or names of the applicant or applicants, a description of the road or streets or parts thereof for which the application is made, and the time and place fixed for the hearing. Such hearing may be adjourned from time to time by order of the board. If after such hearing the board shall deem it to be for the public interest to grant such authority in whole or in part, the board may make and enter the proper order granting the authority applied for or such part thereof as the board deems to be for the public interest, and shall require such railroad or railway and its appurtenances to be placed in such location on or along the road or street as the board finds will cause the least interference with other uses of the road or street. In case any such railroad or railway, is or shall be located in part on private right of way, the owner thereof shall have the right to construct and operate the same across any county road or county street which intersects such private right of way, if such crossing is so constructed and maintained as to do no unnecessary damage: Provided, That any person or corporation constructing such crossing or operating such railroad or railway on or along such county road or county street shall be liable to the county for all necessary expense incurred in restoring such county road or county street to a suitable condition for travel.

As to Private Property.

Every corporation incorporated or that may hereafter be incorporated under the laws of this state, or of any other state or territory of the United

States and doing business in this state for the purpose of operating railroads or railways by electric power, shall have the right to appropriate real estate and other property for right of way or for any corporate purpose, in the same manner and under the same procedure as now is or may hereafter be provided by law in the case of ordinary railroad corporations authorized by the laws of this state to exercise the right of eminent domain: Provided, That such right of eminent domain shall not be exercised with respect to any public road or street until the location of the electric railroad or railway thereon has been authorized in accordance with section one of this act.

May Lease or Purchase Plants.

Any corporation incorporated or that may hereafter be incorporated under the laws of this state or any state or territory of the United States, for the purpose of constructing, owning or operating railroads or railways by electric power, may lease or purchase and operate (except in cases where such lease or purchase is prohibited by the constitution of this state) the whole or any part of the electric railroad or electric railway, of any other corporation heretofore or hereafter constructed, together with the franchises, powers, immunities and all other property or appurtenances appertaining thereto: Provided, That such lease or purchase has been or shall be consented to by stockholders of record holding at least two-thirds in amount of the capital stock of the lessor or grantor corporation; and all such leases and purchases heretofore made or entered into by consent of stockholders as aforesaid are for all intents and purposes hereby ratified and confirmed, saving, however, any vested rights of private parties.

All acts and parts of acts in conflict with this act are hereby repealed: Provided, That this repeal shall not affect any proceeding now pending in any court, and any proceeding now pending may be prosecuted to completion under the acts heretofore in force. [Filed without approval, Mar. 17, 1903; L. 1903, p. 364.]

Under Laws 1899, page 147, granting electric railway corporations the power of eminent domain, such corporations are thereby vested with legal capacity to prosecute proceedings for the appropriation of private property: State ex rel. v. Superior Court, 30 Wash. 219, 70 Pac. 485.

Condemnation proceedings for the appropriation of a portion of a dedicated street for electric railway purposes are warranted, although Laws 1901, page 147, section 1, forbid the exercise of such power with respect to public roads or streets: State v. Superior Court, 30 Wash. 219, 70 Pac. 485.

§ 5656. Trespass — Cutting trees.— Where an action is brought for the conversion of standing timber, instead of the statutory action under Ballinger's Code, sections 5656, 5657, providing for treble damages in case of willful or malicious trespass, the question for the jury is not the mala fides of defendant, but whether the taking was wrongful: Chappell v.

Puget Sound Reduction Co., 27 Wash. 63, 91 Am. St. Rep. 820, 67 Pac. 391.

In an action to recover treble damages for the willful and unlawful cutting of plaintiff's timber, under Ballinger's Code, section 5656, defendants set up the defense that they were the owners of adjoining land and had done the act by inadvertence, through a mistake as to the boundary. An instruction charged the jury that if they found defendants went upon the plaintiff's land in good faith in the belief that it was their own, or that their going was not marked by any spirit of wantonness, willfulness or evil design, then they must find defendants' action was not willful; that, before they could determine defendants' willfulness, they must be satisfied the trespass was attended by circumstances of bad faith and intentional wrong; that if defendants committed the trespass knowingly, or by the exercise of ordinary care could have ascertained they were trespassing, then they should find the

action was willful. Held, that, if the last part of the instruction was inconsistent with the preceding portions, plaintiff could not complain, because it was in his favor. Held, also, that, even if the instruction were erroneous, it was without prejudice, as the jury found specially that there was no willful trespass: *Gardener v. Lovgren*, 27 Wash. 356, 67 Pac. 615.

The statute authorizing treble damages for the willful cutting of another's timber being of a penal nature, intent to commit the trespass is a necessary element in order to justify the imposition of treble damages: *Id.*

§ 5674. Actions against public corporations.—Where a municipal corporation undertakes the construction of a public work which falls legitimately within its corporate powers, it is liable for any injuries resulting from the negligence of an employee, although in attempting to exercise such power the corporate authorities act in excess of the powers conferred by the charter, and enter into a contract that is clearly ultra vires: *Collensworth v. New Whatcom*, 16 Wash. 224, 47 Pac. 439.

Defective bridge.—A county is liable for personal injuries resulting from a defective bridge, under Code of Procedure, section 672, providing that an action may be maintained against a county "for an injury to the rights of the plaintiff arising from some act or omission of such county," since the duty of keeping bridges in repair is imposed upon counties by General Statutes, sections 2068, 2070 (Bal. Code, §§ 3834, 3836): *Kirtley v. Spokane County*, 20 Wash. 111, 54 Pac. 936.

Prerequisite to.—No action can be maintained against a county, whether upon a demand arising in tort or upon a claim arising out of contract, unless the same has first been presented to the county commissioners for rejection or allowance, under the provisions of Ballinger's Code, section 5674, allowing suits against counties; of section 359 requiring presentment of claims to county commissioners before suit; of section 393 requiring "all claims, demands and accounts against the county" to be presented to the county commissioners for their examination and allowance; and of section 342, subdivision 6, which makes it the duty of the county commissioners to have the care and management of the county funds and business: *Hoexter v. Judson*, 21 Wash. 646, 59 Pac. 498.

§ 5676. Judgments against—Payment—Manner of enforcing.—In the absence of a special provision in the charter of a city, relating to the payment of judgments, the method of payment is governed by Code of Procedure, section 674. The fact that a city has reached its limit of indebtedness is not a defense in an

action for personal injuries occasioned by negligence, and, therefore, the fact of such indebtedness would not justify the officer in refusing to issue a warrant for a judgment against the city in such action. A warrant given for a judgment for damages against a city is entitled to payment in the order of its issue and would not be postponed in favor of claims for necessary municipal expenses: *Lorence v. Bean*, 18 Wash. 36, 50 Pac. 582.

Under Ballinger's Code, section 5676, a transcript of the execution docket showing the judgment and its satisfaction is a sufficient compliance with the statute, without giving a transcript of the judgment in full: *Smith v. Ormsby*, 20 Wash. 396, 72 Am. St. Rep. 110, 55 Pac. 570.

§ 5678. Actions to enjoin taxes—Tender of tax due is a necessary prerequisite. In an action to remove a cloud upon plaintiff's land by reason of the excessive valuation thereof for taxes and to compel the county to accept the amount of taxes that would be due upon a true valuation, the complaint is proof against demurrer when it alleges that the assessors knowingly, purposely and fraudulently placed values upon said land during the five years preceding the commencement of the action at from five to six times its true valuation, and that land of like kind and quality in the same vicinity was assessed at less than one-half like values: *Miller v. Pierce County*, 28 Wash. 110, 68 Pac. 358.

A tender of the full amount of taxes due is unnecessary where the taxpayer has taken the initiative to test the legality of the assessment by means of an action to quiet title, and is not seeking to enjoin the government from attempting to collect its taxes: *Id.*

The fact that the owner of land had failed to appear before the board of equalization and object to an excessive and arbitrary valuation placed on the land by the assessor would not bar an action to secure a reduction of the taxes assessed against him, since the action of the legislature in dropping from the revenue law of 1890 the provision of Code of 1881, section 2879, which prohibits further recourse in law to the person who fails to seek a correction of his assessment before the board of equalization, and the failure of subsequent legislatures to re-enact such provision, show a legislative intent to dispense with that requirement of section 2879: *Id.*

Before the owner of land sold for delinquent taxes can set same aside he must pay or tender to the purchaser the taxes, penalties, interest and costs paid by him. In an action of ejectment against one in possession of land as a purchaser at a tax sale the defendant is entitled to recover all taxes paid by him, with interest there-

cn: Ward v. Huggins, 16 Wash. 530, 48 Pac. 240.

A complaint in an action to remove a street improvement assessment as a cloud upon title, upon the ground that it is barred by the statute of limitations, and also that it was without foundation in the first instance, is not demurrable because it does not allege a tender of the amount of the assessment: Kinsman v. Spokane, 20 Wash. 118, 72 Am. St. Rep. 24, 54 Pac. 934.

Where an action is brought to enjoin the collection of a tax alleged to be void, no tender is necessary, under the terms of Ballinger's Code, section 5678, which requires the payment or tender of what is justly due as a prerequisite to suit: Lewiston Water Co. v. Assotin Co., 24 Wash. 372, 64 Pac. 544.

Under the requirements of Ballinger's Code, section 5678, it is sufficient to plead payment and tender of the taxes justly admitted to be due, without tendering such portion of the tax as is claimed to be illegal: Id.

The owner of land sold for delinquent taxes cannot maintain an action to quiet title without tendering defendant the amount paid by him, with interest, on account of such delinquent taxes, although defendant's incipient title under the tax sale may have become null and void for failure to perfect it within the statutory time, since such failure would not extinguish the lien itself as provided by Laws 1893, page 361, section 88, which declares that "the taxes assessed upon real property shall be a lien thereon from and including the first day of April in the year in which they are levied, until the same are paid": Denman v. Steinbach, 29 Wash. 179, 69 Pac. 751.

A sufficient tender of taxes is alleged in a petition for mandamus to compel the treasurer to issue a redemption certificate from a sale therefor, when it is alleged that plaintiff demanded of the treasurer a statement of the taxes due upon his undivided sixth interest in the land, which was refused, and that he tendered to the treasurer the amount due upon that interest, as near as he could ascertain that amount, but, if there should be more due, he is ready and willing to pay same: State ex rel. v. Reed, 29 Wash. 383, 69 Pac. 1096.

One who brings an action to obtain a reduction in the amount of his assessment need only tender, under Code of Procedure, sections 676, 677, the sum averred in good faith to be justly due, and offer to pay any further sum that may be found due; and the finding in such case of a larger amount due by the court would affect only the question of costs: Landes Estate Co. v. Clallam County, 19 Wash. 570, 53 Pac. 670.

§ 5686. Official bond—Leave to sue—Effect on limitations.—The disability to begin action upon an official bond until leave of court shall be obtained therefor, would not enlarge the statute of limitations, when the plaintiff had the option at any time to obtain leave of court to bring its action, and the failure to obtain leave was due to its own delinquency: Spokane County v. Prescott, 19 Wash. 418, 67 Am. St. Rep. 733, 53 Pac. 661.

In an action upon an official bond by the agents of the state solely for the benefit of the state, leave of court to prosecute the action is not necessary, under Code of Procedure, section 696, requiring leave of court to be first obtained before the commencement of an action by a plaintiff other than the state, since an action by state agents solely for its benefit is virtually an action by the state. The objection that plaintiff has commenced his action without leave of court first obtained, in cases where such leave is necessary, is waived, if not raised until after the joinder of issue: Nye v. Kelly, 19 Wash. 73, 52 Pac. 528.

§ 5705. Sureties—Notice to creditor to sue principal.—Where the answer of defendant in an action on a promissory note sets up the defense that he was a surety and that plaintiff failed, on his request, to sue the principal, a reply that after the alleged notice to sue was given by the surety, the latter instructed the plaintiff not to sue upon the note, is sufficient to warrant proof of the waiver. Unreasonable delay in suing the principal at the request of a surety is not shown, where notice to sue was given some time in February and a waiver of the notice given on the third day of the succeeding month: Rotting v. Cleman, 20 Wash. 116, 54 Pac. 935.

§ 5707. Trial of suretyship—Absence of principal.—The question of suretyship upon a promissory note cannot be raised by defendant in an action in which the alleged principal does not appear, as in such case a judgment cannot be rendered that the property of the principal be first exhausted before resort to that of the surety: Kirkland Land & Imp. Co. v. Jones, 18 Wash. 407, 51 Pac. 1043.

§ 5710. Contribution among sureties.—The indebtedness of one cosurety to another does not accrue at the time of their signing the obligation of the principal debtor, but on the date that one cosurety makes payment on the common obligation in excess of his share of the common burden. Lands acquired under the homestead laws of the United States are not exempt from execution in satisfaction of a claim for contribution among cosureties, although the principal obligation may have been incurred prior to the issuance of patent, if the payment by one cosurety, upon

which the claim of contribution is founded, has not been made until after the issuance of patent: *Shoemaker v. Stimson*, 16 Wash. 1, 47 Pac. 218.

§ 5716. Divorce—Grounds for.—Under Ballinger's Code, section 5716, the mere fact that plaintiff believes he and defendant can no longer live together affords no legal cause for divorce: *Stanley v. Stanley*, 24 Wash. 460, 64 Pac. 732.

A wife's lack of interest in her husband and his affairs, her refusal to enter into the mode of life which he desired to follow socially, her constant repining, and the fact that she was moody, whimsical, exacting and irascible would not constitute cruel treatment, even though causing her husband mental suffering: *Branscheid v. Branscheid*, 27 Wash. 368, 67 Pac. 812.

A wife is entitled to a divorce on the ground of cruel treatment, where her husband compels her by force to submit to sexual intercourse while pregnant and suffering from morning sickness, the effect of which was to make her very sick at the time, and to undermine her health: *McAllister v. McAllister*, 28 Wash. 613, 69 Pac. 119.

The wife's testimony as to enforced sexual intercourse during pregnancy, though denied by the husband, was sufficiently corroborated to be deemed established, where it appeared that the wife was in fairly robust health at the time of marriage, that she left her husband considerably broken in health, but rapidly recovered her normal condition as soon as she got away from him; that, though the wife was soon to become a mother and was penniless, the husband made no offer of aid or support; and that he had contradicted every witness in the case who testified to his conduct toward his wife: *Id.*

Alimony without divorce.—A wife, who without cause has been abandoned by her husband, may maintain an action for maintenance independent of an action for divorce: *Kimble v. Kimble*, 17 Wash. 75, 49 Pac. 215.

Thirty years' neglect to demand, works no estoppel.—The fact that a wife has neglected for a period of thirty years to make demand for support and maintenance upon a husband who has abandoned her does not work an estoppel against her right to maintenance: *Id.* *Jackson v. Jackson*, 17 Wash. 687, 49 Pac. 1119, follows *Kimble v. Kimble*, 17 Wash. 75, 49 Pac. 216.

§ 5718. Residence — Jurisdiction.—Under the statutory provisions governing divorce, the superior court has no jurisdiction when it appears that neither the plaintiff nor cross-complainant have been residents of the state for a year preceding the filing of the petition for divorce; nor would allegations in plaintiff's complaint and affidavit setting forth domicile here

for the necessary length of time, when the facts are otherwise, be sufficient to warrant the court in entertaining jurisdiction of defendant's cross-complaint for annulment of the marriage: *Van Alstine v. Van Alstine*, 23 Wash. 310, 63 Pac. 243.

The refusal to grant a change of venue to the county of defendant's residence would not constitute error: *Bachelor v. Bachelor*, 30 Wash. 639, 71 Pac. 193.

§ 5722. Interlocutory order—Suit money.

Where there has been a de facto marriage, which is voidable only at the suit of the wife because contracted when laboring under the disability of want of legal age, she is entitled, when suing for an annulment of the marriage, to an allowance of suit money and alimony pendente lite: *Arey v. Arey*, 22 Wash. 261, 60 Pac. 724.

In an action for divorce the husband will not be required to pay suit money to the wife to enable her to conduct her case on appeal, where it is apparent from the showing made that such an order for the payment of suit money would be futile and vain by reason of the husband's inability to comply therewith: *Bachelor v. Bachelor*, 30 Wash. 203, 70 Pac. 491.

The failure of the defendant in a divorce proceeding to comply with the court's order for the payment of alimony and suit money to the plaintiff will not warrant the court in striking the defendant's answer, inasmuch as it is the policy of the law that divorces be not granted without the interposition of defenses to the action: *Bachelor v. Bachelor*, 30 Wash. 639, 71 Pac. 193.

Custody of children.—A decree in divorce proceedings awarding the mother the custody of the children is temporary in its nature, and, on her death, the right of their father to their custody is renewed, and he cannot be deprived thereof unless so completely unfit that the welfare of the children imperatively demands another disposition of their custody: *In re Neff*, 20 Wash. 652, 56 Pac. 383.

§ 5723. Decree — Enforcement of.—A decree for continuing monthly alimony awarded the wife for the support of minor children upon granting her a divorce, which made such award a lien upon certain described premises, may be foreclosed upon the failure of the husband to make any of such payments, the value of such continuing alimony reduced to a gross sum and the premises sold to satisfy the lien: *Trumble v. Trumble*, 26 Wash. 133, 66 Pac. 124.

The fact that an appeal is pending from an order of the court in a proceeding to have one attached for contempt for refusing to comply with a decree adjudging that he pay a specified sum monthly as alimony to his divorced wife for the support of his children, is not ground for

the court's declining to assume jurisdiction of a similar proceeding to compel payment of another installment of alimony subsequently becoming due and payable: *State v. McClinton*, 17 Wash. 45, 48 Pac. 740.

Although the statutes do not in express terms authorize the awarding of permanent alimony, yet the power to do so is conferred upon the courts under the terms of Ballinger's Code, section 5723: *In re Cave*, 26 Wash. 213, 90 Am. St. Rep. 736, 66 Pac. 425.

A divorced wife may maintain an action against her former husband for the maintenance of their minor child, whose custody had been awarded to her by the decree of divorce, when it appears there was a finding in the action for divorce that neither party had any property, and the decree made no provision concerning alimony nor the maintenance of the child. Where a divorced couple subsequently unite and live together as man and wife, and the wife applies a second time for divorce under the impression that they are legally remarried, the order of the court awarding her the custody of their child is not prejudicial when it is the same award as made in the original divorce proceeding: *Gibson v. Gibson*, 18 Wash. 489, 51 Pac. 1041.

Where in an action for divorce the court has jurisdiction over the status of the plaintiff only, the defendant not having been personally served and not having submitted to the jurisdiction of the court, the wife may, subsequent to divorce, obtain from the court of the domicile of the husband further relief as to the property and alimony: *Adams v. Abbott*, 21 Wash. 29, 56 Pac. 931.

The authority conferred upon the court by Ballinger's Code, section 5723, in granting a divorce, to make a disposition of the property of the parties, does not give jurisdiction to enforce its decree by imprisonment, although that power is expressly given by the preceding section for the enforcement of orders made while an action is pending: *In re Van Alstyne*, 21 Wash. 194, 57 Pac. 348.

In an action brought by the wife for separate maintenance, the court has jurisdiction to determine the status of their real estate, under Ballinger's Code, section 5723, which provides that "in granting a divorce the court shall also make such disposition of the property of the parties as shall appear just and equitable": *Branscheid v. Branscheid*, 27 Wash. 368, 67 Pac. 812.

A court may modify its decree awarding the custody of an infant child, made in a divorce proceeding, although the time for appeal has expired, when it is shown that new circumstances and conditions have arisen which require a modified decree to

meet the new conditions: *Koontze v. Koontze*, 25 Wash. 336, 65 Pac. 546.

Where a court in a suit for divorce obtained personal jurisdiction of the parties it thereby acquired jurisdiction of the status constituted by the relation between the parents and their minor children, when the children were within the territorial limits of the court at the time the action was commenced, and their subsequent departure therefrom would not deprive the court of jurisdiction to fix the custody of the children: *State v. Rhoades*, 29 Wash. 61, 69 Pac. 389.

§ 5726. Prohibition against remarriage in six months.—A statute prohibiting the remarriage of either party within six months after the rendition of a decree of divorce has no extraterritorial force, and where one of the parties contracts marriage in another state, valid under the laws of that state, the marriage is valid in the state of the court rendering the divorce, although the parties may return to the latter state and take up residence there prior to the expiration of the statutory prohibition on remarriage: *Willey v. Willey*, 22 Wash. 115, 79 Am. St. Rep. 923, 60 Pac. 145.

§ 5729. Divorce—Right of state as to appeal.—The state has no right of appeal from the judgment in a divorce proceeding, which was resisted by the prosecuting attorney under authority of the statute providing for his interfering in divorce cases whenever the complaint remains undefended: *Lee v. Lee*, 19 Wash. 355, 53 Pac. 349.

§ 5741. Writ of review—Jurisdiction of superior court.—There being a remedy by appeal to the superior court, from the judgments and orders of a municipal court, provided by statute, the superior court has no jurisdiction to grant a writ of review for the purpose of bringing before it the proceedings of the municipal court: *Falsetto v. Seattle*, 18 Wash. 509, 52 Pac. 250.

Where the action of a justice of the peace in denying a motion for a change of venue is brought before the superior court by the issuance of a writ of review, it is error for the superior court to give judgment upon any other question than the alleged error of the justice in not granting the change of venue. A petition for a writ of review does not state facts sufficient to warrant its issuance, when it does not appear from the facts alleged in the petition that the defendant has a meritorious defense to the action and that injury would result to him, if the case were allowed to proceed; for this purpose a general allegation of resulting injury is not sufficient, but the facts must be stated so that the court, in the exercise of its discretion, may properly determine whether injury would follow the action

complained of. The action of a court in vacating its judgment is erroneous, when the only ground therefor was that it had not come into possession of plaintiff's brief prior to the time when judgment was rendered: *State ex rel. Grady v. Lockhart*, 18 Wash. 531, 52 Pac. 315.

There being a remedy by appeal to the superior court from the judgments and orders of a justice of the peace, the superior court has no jurisdiction to grant a writ of review for the purpose of bringing before it the proceedings of a justice's court: *State ex rel. v. Lockhart*, 28 Wash. 460, 68 Pac. 894.

In taxation, to review action of board of equalization.—A board of county commissioners, when sitting as a board of equalization, exercises judicial functions in passing upon the valuations of property returned by the assessor; and from its decisions in such matters there is no appeal. The action of a board of equalization in fixing the valuation of property for taxation is subject to review by the courts, under Laws 1895, page 115, section 4 (*Ballinger's Code*, § 5741), providing for the issuance of the writ of review in cases where an inferior tribunal or board exercising judicial functions has exceeded its jurisdiction or has acted erroneously, and there is no appeal nor any speedy and adequate remedy at law. The fact that the taxpayer has a remedy by injunction against the treasurer to prevent the sale of his property for taxes illegally assessed, in an action to foreclose the tax lien, to be instituted three years after delinquency, does not afford him such a speedy and adequate remedy as to deprive him of the right to a writ of review. Where a board of equalization, by formal order, has proceeded to raise an assessment from \$3,600 to \$18,000, they are estopped from claiming that the assessment as returned by the assessor was in fact \$18,000: *Lewis v. Bishop*, 19 Wash. 312, 53 Pac. 165.

Office of.—The office of a writ of review being to enforce the judgment which should have been rendered by the lower tribunal, where the lower tribunal has no jurisdiction to adjudge costs the superior court would be without jurisdiction to enter judgment for the costs incurred before such lower tribunal: *Bringgold v. City of Spokane*, 19 Wash. 333, 53 Pac. 368.

Certiorari will not lie to bring up for review the action of the lower court in permitting parties to a condemnation suit for right of way to make use thereof without first making compensation to the owners, since there is an adequate remedy by appeal from the judgment in the condemnation proceedings: *Parker v. Superior Court*, 25 Wash. 545, 66 Pac. 154.

The extraordinary remedy of a writ of review will lie, although there may be a

remedy by appeal, where such remedy by appeal is neither speedy enough nor adequate to preserve the fruits of the litigation when won, under the constitutional and statutory provisions which confer jurisdiction on the supreme court to issue such writs when necessary to the complete exercise of its appellate and revisory jurisdiction, and for the purpose of correcting any erroneous or void proceeding, when there is no appeal, nor in the judgment of the court any plain, speedy and adequate remedy at law. Certiorari will not issue to review an order of the superior court refusing to discharge a receiver, when an appeal is pending in the action in which he was appointed, since the fact that the receiver's fees and expenses might depreciate the value of the property and that his management might render the business unprofitable would have no controlling influence upon the question of the adequacy of the remedy by appeal: *State ex rel. v. Superior Court*, 28 Wash. 584, 68 Pac. 1052.

Proceedings before a superintendent of public instruction to revoke a teacher's certificate, upon the determination of sufficient cause, after a hearing, are subject to review by certiorari, under *Ballinger's Code*, sections 5740-5751, authorizing such writ when an officer exercising judicial functions has exceeded his jurisdiction or has acted illegally, or to correct an erroneous or void proceeding, where there is no appeal, or any plain, speedy and adequate remedy at law: *Brown v. Gear*, 21 Wash. 147, 57 Pac. 359.

By supreme court.—The supreme court will not assume jurisdiction of an application for a writ of review in a cause, where in the amount in controversy is less than \$200, on the ground that the relator has no remedy by appeal, since the constitution restricts jurisdiction to the superior court over actions whose original amount in controversy does not exceed \$200: *State v. Superior Court*, 22 Wash. 496, 61 Pac. 158.

Certiorari will lie for the review of the judgment of the superior court determining the question of public use and necessity in proceedings for the appropriation of private property, in the absence of a statute permitting appeal from an adjudication upon that question: *State ex rel. v. Superior Court*, 30 Wash. 219, 70 Pac. 485.

One who has been appointed executor under a will whose probate is afterward revoked, has a remedy by appeal from an order made in a subsequent application for the appointment of a general administrator of the estate, though the application was ex parte, since it is in effect an order made after judgment which affects a substantial right of such executor, and hence certiorari would not lie for the

purpose of reviewing the action of the court in appointing such general administrator: *State ex rel. v. Superior Court*, 28 Wash. 678, 69 Pac. 375.

Writ of review lies when.—Where a remedy by appeal would be of no avail to one ousted from office by a judgment of the superior court, by reason of the fact that his right to the office would terminate before a hearing could be had on appeal, the supreme court has jurisdiction by writ of review to examine and correct the action of the lower court: *State v. Tallman*, 24 Wash. 426, 64 Pac. 759; *State v. Superior Court*, 26 Wash. 278, 66 Pac. 385.

Under article 4, section 4, of the state constitution giving the supreme court power to issue all writs necessary to the complete exercise of its appellate and revisory jurisdiction, and under article 1, section 16, of the constitution, which declares that, in proceedings for the appropriation of private property for a use alleged to be public, the question of public use shall be a judicial one, the supreme court has power to issue the writ of certiorari for the purpose of bringing the determination of that question by the superior court before it for review, where the special statute governing appeals in condemnation cases restricts the supreme court to an inquiry into the "propriety and justness of the damages" awarded: *Seattle etc. R. R. Co. v. B. B. etc. R. R. Co.*, 29 Wash. 491, 92 Am. St. Rep. 907, 69 Pac. 1107.

The supreme court will not review an order of the superior court restraining interference with a receiver's possession of a certain building which was claimed by other parties, since there is a remedy by appeal from such order: *State ex rel. v. Superior Court*, 30 Wash. 177, 70 Pac. 256.

§ 5742. How application for writ is made.—The act of March 13, 1895 (Laws 1895, p. 114), furnishes a full and complete mode of procedure in certiorari proceedings, and necessarily repeals by implication prior statutes covering the same subject matter. Under Laws 1895, page 114, paragraph 5, a writ of certiorari issued by the clerk of the court without any order or authority from the court or judge thereof is illegal and unwarranted, and should be quashed: *Leavitt v. Chambers*, 16 Wash. 353, 47 Pac. 755.

The fact that a mandate of the superior court requiring the officers of a political convention to certify a certain nomination, which it is sought to have reviewed, has been carried into effect, is no ground for quashing the writ of review, since, in case of a reversal of the mandate, the nomination may still be certified to the officers whose duty it is to place it upon the official ballot: *State v. Moore*, 23 Wash. 276, 62 Pac. 769.

On denying an application for certiorari to review the wrongful action of the superior court in appointing a general, instead of a special, administrator pending an appeal, the supreme court has jurisdiction to direct that the functions of such administrator be restricted merely to the preservation of the estate pending the appeal: *State ex rel. v. Superior Court*, 28 Wash. 678, 69 Pac. 375.

Notice.—The fact that a writ of review has been granted by the court without requiring notice to the adverse party or the filing of a bond is not ground for quashing the writ, as the statutes permit the former practice and do not require the latter: *State ex rel. Cann v. Moore*, 23 Wash. 276, 62 Pac. 769.

§ 5744. Contents of writ.—The failure of a writ of review to recite the errors sought to be reviewed is not ground for quashing, since Ballinger's Code, section 5744, which prescribes the contents of the writ, does not require such recital: *Id.*

§ 5755. Mandamus—Parties as relators, who may be.—Where a street railway company attempts to discontinue the operation of a line, after acquiring the right and commencing the performance of the service, its duty to continue the operation of the railway may be enforced by mandamus: *State v. Spokane Street Ry. Co.*, 19 Wash. 518, 67 Am. St. Rep. 739, 53 Pac. 719.

Although the application for a writ of mandamus is made in the interest of a private person, it is proper practice to bring the proceeding in the name of the state, on the relation of the party beneficially interested: *State ex rel. v. Pacific Brewing Co.*, 21 Wash. 451, 58 Pac. 584.

Board of county commissioners may maintain suit to compel auditor to perform his official duty: *State v. Headlee*, 22 Wash. 126, 60 Pac. 126.

Parties defendant.—Upon a petition for mandamus to compel a public officer to convey lands purchased at tax sale, private persons who claim an interest in the land are proper party defendants, under the provisions of our code which permit the rights of all persons in the subject matter in controversy to be determined in one action: *State v. Cranney*, 30 Wash. 595, 71 Pac. 50.

Defenses to issue of writ.—In a mandamus proceeding to compel a county auditor to draw a warrant for the salary of a justice of the peace, the defendant cannot raise the defense that the city in which the justice had jurisdiction had a population less than five thousand, and that the justice had waived his right to salary through failure to pay into the county treasury the fees collected by him, when such questions have already been decided adversely to the county in an

injunctive suit brought by the county attorney in his own name, but in the interest of the county, which authorized the proceedings and paid the costs of the action, for the purpose of determining the liability of the county on account of the claim at bar and others of similar nature: *State v. Headlee*, 19 Wash. 477, 53 Pac. 948.

The fact that a city has been enjoined from paying certain warrants cannot be set up as a defense to mandamus proceedings to compel payment by one who was not a party to the injunction suit. A party or officer is not bound by a void injunction or order of the court, and will not be punished for its violation. In an action of mandamus by a warrant holder against a city treasurer to enforce payment of a warrant duly executed by the proper city officers, the city is not a necessary party defendant, as the presumption is that the claim evidenced by the warrant was properly audited and allowed: *Savage v. Sternberg*, 19 Wash. 679, 67 Am. St. Rep. 751, 54 Pac. 611.

When proper remedy.—Where warrants have been issued by a city, the proper remedy is not an action at law to recover the amount due thereon, but mandamus to compel their payment, even if the liability of the city is disputed on the ground they have been once paid or are forgeries, since Laws 1895, page 118, section 21, permits the trial of disputed questions of fact in mandamus proceedings: *Bacon v. Tacoma*, 19 Wash. 674, 54 Pac. 609.

Mandamus is the proper remedy to compel the certification of the payroll for the salary of a public officer and the issuance of a warrant therefor, when the salary is fixed by law, and the officer charged with the performance of such duty refuses to perform the same. *State v. Daggett*, 28 Wash. 1, 68 Pac. 340.

The rule that *quo warranto* is the proper remedy to try title to an office would not prevent resort to a proceeding by mandamus to compel payment of an officer's salary, in which his right to the office is incidentally involved, where there is no other claimant or occupant of the office whom it is necessary to oust: *Id.*

Where a city comptroller refuses to issue a salary warrant to an officer of the city, on the ground that he has no title to the office, mandamus is the proper remedy when the salary of the officer and the duty of the comptroller to draw such warrants are both fixed by law, and the officer is not compelled to first resort to an action at law against the city for the recovery of money, especially when it appears that the city is not disputing his claim: *Id.*

The duty of a city comptroller to draw warrants for officers whose salary is fixed by law being clearly defined by ordinance

and charter, the performance of such duty would not require the exercise of judgment and discretion on the comptroller's part to determine the title of an officer to his office, and hence the performance of his duty in that respect is enforceable by mandamus: *Id.*

Mandamus is the proper remedy to compel a court to proceed, where its jurisdiction is manifest and it evades hearing the proceeding by holding that it has no jurisdiction: *State ex rel. v. McClinton*, 17 Wash. 45, 48 Pac. 743.

The holder of a warrant drawn upon a special fund to be raised from assessments made for a street improvement may by mandamus compel the city officers to proceed with the collection of the assessments: *German-American Sav. Bank v. Spokane*, 17 Wash. 315, 49 Pac. 542.

Where it is the duty of the state treasurer to pay warrants drawn upon a certain fund when there are moneys in such fund, and, in case there are none, his duty requires him to indorse on the warrants, "Not paid for want of funds," a private owner of a warrant is entitled to a writ of mandate compelling the officer to perform his duty, when he refuses to make such indorsement, and attempts to pay the warrant with moneys of another fund: *State ex rel. v. Young*, 18 Wash. 22, 50 Pac. 786.

Mandamus will lie to compel a county auditor to draw a warrant upon a claim for unpaid salary as justice of the peace, when judgment therefor has been duly rendered in an action between the county and the claimant, involving the legality of such claim: *State v. Headlee*, 18 Wash. 220, 51 Pac. 369.

Where it is made the duty of the county commissioners to make an assessment to pay the interest upon the bonds of an irrigation district, upon the failure of the district directors to make provision therefor, mandamus will lie to compel the county commissioners to levy such assessment, if the right to relief is clear, and in such an action the irrigation district is not a necessary party, when the legality of the bonds has already been determined in another action to which it was a party. Demand upon the officers of an irrigation district to make an assessment to pay interest on bonds is unnecessary, when by unreasonable delay they have lost the power to make the levy and the duty has devolved upon the county commissioners: *State ex rel. Witherop v. Brown*, 19 Wash. 383, 53 Pac. 548.

Mandamus awarded to compel county commissioners to allow, and auditor to issue, warrant for salary of county clerk, and decided incidentally that the board of commissioners could, and it was their duty to, ascertain by proof when a county had so increased in population as to be within a certain class in order to deter-

mine the amount of salary due: *State v. Neal*, 25 Wash. 264, 65 Pac. 188.

On an appeal from a judgment for contempt, which is permitted the party in contempt by Ballinger's Code, section 5811, the appellant is entitled to all the provisions of the law governing appeals, including the right to a stay of execution pending his appeal; and, where the court refuses to fix a supersedeas bond for the purpose of staying its judgment of contempt, it may be compelled so to do by writ of mandamus: *State ex rel. v. Superior Court*, 28 Wash. 590, 68 Pac. 1051.

Mandamus will lie to compel a street railway company to resume the operation of a line which it has discontinued without any prior demand for the performance of its duty to the public in that respect. A private individual who has bought considerable property near the end of a street railway line and has improved the property and made his residence there, relying upon the operation of the line, has such a material interest as to be a proper relator in proceedings by mandamus to enforce the performance of the railway company's public duty to operate its line: *State ex rel. Grinsfelder v. Street Ry. Co.*, 19 Wash. 518, 67 Am. St. Rep. 739, 53 Pac. 719.

Mandamus will lie to compel a superior court to assume jurisdiction of an action by a receiver of an insolvent corporation, which the court had declined on the ground that the enactment of the federal bankruptcy law of July 1, 1898, had suspended the jurisdiction of state courts in insolvency cases, where there has been no proceeding in bankruptcy instituted respecting the matter in controversy: *State ex rel. Strohl v. Superior Court*, 20 Wash. 545, 56 Pac. 35.

Where bonds drawing interest and maturing annually have been issued against real estate to cover the unpaid installments due thereon for local improvements, under Ballinger's Code, section 1185, which provides for the issuance and collection of bonds on the property benefited; that the owner of such property may redeem from such liability by paying the entire assessment chargeable against his property, "after the issuance of the bonds by paying all the installments of the assessments which have been levied and also the amount of unlevied installments with interest on the latter at the rate of eight per centum per annum from the date of the issuance of the bonds to the time of maturity of the last installment"; and that "all sums so paid shall be applied solely to the payment of such improvements or the redemption of the bonds issued therefor," mandamus will lie to compel the city treasurer to accept the full amount of principal and interest of the bonds to the date of their maturity, since the treasurer cannot exact interest

in full on the total assessment from date of levy until the maturity of the last bond, in view of the fact that the statute provides that all sums paid shall be applied solely to the redemption of the bonds: *State ex rel. Embree v. Rathbun*, 22 Wash. 651, 62 Pac. 85.

Under Laws 1897, page 222, requiring cities of less than twenty thousand inhabitants to maintain a "current expense fund," corresponding to what had theretofore been known as the "general fund," and an "indebtedness fund" against which should be chargeable "all outstanding warrants, certificates and all other obligations, and indebtedness of the city, for the payment of which no provision is made by law," the indebtedness described as "all other obligations and indebtedness" must be construed as limited to the same class as the particular words which precede, and hence where plaintiff had a claim creating a general liability of the city, but the amount of which was not finally fixed and ascertained at the date of the creation by law of the indebtedness fund, plaintiff could compel by writ of mandate the issuance to it of warrants upon the current expense fund in payment of the indebtedness due it: *Townsend Light Co. v. Hill*, 24 Wash. 470, 64 Pac. 778.

When not proper remedy.—Mandamus will not lie to compel a city to levy a special tax for the payment of a judgment against the city for a tort: *Lorence v. Bean*, 18 Wash. 37, 50 Pac. 582.

Mandamus will not lie to compel the superior court to try an action where the amount involved is less than \$200, since the constitutional provision giving the supreme court jurisdiction in mandamus as to state officers must be construed in connection with the provision in the same section prohibiting the appellate jurisdiction of the supreme court, where the amount in controversy is less than \$200: *State ex rel. Wallace v. Superior Court*, 24 Wash. 605, 64 Pac. 778.

Mandamus will not lie to compel a board of county commissioners to issue funding bonds which they had contracted to sell, when the contract is an executory one, and when the funding proposition has not proceeded beyond the discretionary stage, or, in other words, has not been so far concluded as to leave them only a ministerial duty to perform in connection with their issuance: *Morris & Whitehead v. Williams*, 23 Wash. 459, 63 Pac. 236.

The refusal of the superior court of one county to assume jurisdiction of a cause sent to it on a change of venue amounts to a final order of dismissal of the cause, which, being reviewable on appeal, precludes the supreme court from affording a remedy by writ of mandate to compel the lower court to entertain jurisdiction:

State ex rel. v. Superior Court, 24 Wash. 438, 64 Pac. 727.

Mandamus is not the proper remedy, when the title to an office is in controversy: Lynde v. Dibble, 19 Wash. 328, 53 Pac. 370.

Mandamus will not lie to compel the state auditor to issue a warrant, under an appropriation for the benefit of certain claims arising out of the construction of a normal school building, to a person designated in the appropriation act, where the act does not provide what sum he shall receive, but authorizes the auditor to examine and allow the unpaid claims on account of the construction of the building, and to draw warrants therefor, and, in compliance therewith, he has made such examination and has disallowed the claim: State ex rel. Davey v. Cheetham, 20 Wash. 64, 54 Pac. 772.

Mandamus will not lie to compel a superior court to assume jurisdiction of a contempt proceeding, where defendants had appealed from an order of the court directing them as officers of a city to issue its warrants in payment of a judgment, and, pending such appeal, refused to comply with the order of the court, since an adequate remedy at law is afforded by the appeal, and the issuance of the extraordinary writ of mandamus is unwarranted under such circumstances: State ex rel. v. Superior Court, 20 Wash. 503, 55 Pac. 933.

Mandamus will not lie to compel the superior court to assume jurisdiction of an application for judgment of forfeiture on a delinquent tax certificate, where an appeal lies from the order of the court dismissing the application, even if, in view of the importance of the matter, a speedy construction of the law may be desirable prior to the adjournment of the legislature then in session: State ex rel. Barbo v. Hadley, 20 Wash. 520, 56 Pac. 29.

Mandamus will not lie to compel the superior court to assume jurisdiction of an appeal from a justice of the peace, when there is a remedy by appeal from the judgment of the superior court: State ex rel. McIntyre v. Superior Court, 21 Wash. 108, 57 Pac. 352.

Mandamus will not lie to compel the state land commission to sell certain tide lots to one who has been adjudged by the superior court as having the preference right of purchase, when there is pending before the court an undetermined motion to vacate the judgment upon which the application for the writ is based: State ex rel. v. Bridges, 21 Wash. 591, 59 Pac. 487.

The action of the superior court in dismissing an appeal from the board of state land commissioners, although made more than ninety days after the submission of the question to the court for decision, is

reviewable on appeal, and therefore mandamus will not lie to compel the court to redocket the cause with a view to a retrial in said court: State v. Moore, 21 Wash. 629, 59 Pac. 505.

Mandamus will not lie to compel the superior court to confirm the sale of lands sold on execution, inasmuch as its order refusing a confirmation is appealable: State ex rel. v. Superior Court, 21 Wash. 631, 59 Pac. 505.

Mandamus will not lie to compel a sheriff to make return of an execution, where he has been ordered by the court to withhold its return pending the final determination of another action involving property affected by the lien of the judgment upon which the execution had issued: State v. Hartman, 26 Wash. 524, 67 Pac. 223.

Where the moneys belonging to a special fund have been misappropriated by the city, mandamus will not lie to compel the city to pay warrants on such special fund out of the city's general fund, but the remedy of the party injured by such misappropriation would be by an action sounding in tort for the injury suffered, judgment for which would be satisfied by the issuance of a general fund warrant to be paid in the order of its issuance out of moneys coming into the general fund: Quaker City Nat. Bank v. Tacoma, 27 Wash. 259, 67 Pac. 710.

The action of the court in striking the petition of the state contesting a will that had been admitted to probate and praying for the revocation thereof is appealable, and hence mandamus will not lie to compel the court to hear the contest and permit the state to establish its rights in the estate: State v. Tallman, 29 Wash. 317, 69 Pac. 1101.

Under the rule that the extraordinary writ of mandamus will never issue in any case where it is unnecessary, it was error for the court to issue such writ compelling defendant to publish on or about April 15th a directory of subscribers to its telephone system, where the defendant had answered that it was then engaged in compiling and publishing such a directory in the regular course of its business, which it would have ready for distribution early in the month of April: State v. Sunset Tel. etc. Co., 30 Wash. 676, 71 Pac. 198.

Mandamus is not the proper remedy where one has been illegally removed from office, when the legality of the removal is a disputed question, depending upon the construction of statutory provisions: Kimball v. Olmstead, 20 Wash. 629, 56 Pac. 377.

Mandamus will lie to compel the payment of warrants only when the action presents merely a question of law, or involves questions of fact which are conceded and presents substantially a ques-

tion of law upon such conceded facts. Mandamus to compel the payment of warrants will not lie when the claim involves a question of estoppel: *Bardsley v. Sternberg*, 17 Wash. 243, 49 Pac. 499.

§ 5756. When and upon what it will issue.—In a proceeding by mandamus, under Laws 1895, page 117, section 17, it is unnecessary that a summons issue, as in ordinary civil actions, but the writ of mandamus must be issued upon affidavit, on application of the party beneficially interested. Upon application for a writ of mandate to compel a town to issue its warrant in payment of a judgment, it is no defense to set up that the contract upon which the judgment had been obtained was void, because at the time of entering into the contract the town was beyond its constitutional limit of indebtedness: *Smith v. Ormsby*, 20 Wash. 396, 72 Am. St. Rep. 110, 55 Pac. 570.

Mandamus will lie to compel a superior court to issue a death warrant in accordance with existing law, although before such death warrant can be carried into execution, the existing law will have been superseded by a later enactment which will go into effect in the period intervening between the application for the death warrant and the date fixed for the execution: *State v. Superior Court, Pierce Co.*, 25 Wash. 272, 65 Pac. 183.

Mandamus will not lie to compel the superior court to hear and determine a motion praying for the vacation of an order admitting a will to probate made within a year after the probate of the will, since the statutes afford a plain, speedy, and adequate remedy by providing that a will admitted to probate is binding on all persons, if not contested within one year, and by providing a plain procedure for determining all questions affecting its validity, which may be raised by contest within such year: *State ex rel. Stratton v. Tallman*, 25 Wash. 295, 65 Pac. 545.

Laws 1901, page 213, providing for an appeal in proceedings for the appropriation of private property from an order adjudicating the appropriation to be for a public use being void by reason of the invalidity of the title of such act, mandamus will lie to compel the court, notwithstanding an appeal in such a proceeding, to proceed to cause a jury to be impaneled to determine and assess the amount of damages: *State ex rel. v. Superior Court*, 28 Wash. 317, 92 Am. St. Rep. 831, 68 Pac. 957.

§ 5760. Issues of fact, how tried.—The fact that Ballinger's Code, section 5760, authorizes the court to order questions of fact in an application for mandamus to be tried before a jury, would not excuse the applicant from replying or demurring to an answer therein until the cause had been assigned for trial by jury, since the same section vests the court with power,

in its discretion, to hear and determine such questions without a jury: *Wilson v. Aberdeen*, 25 Wash. 615, 66 Pac. 95.

§ 5765. Damages in, when awarded.—A party having the right to plead and recover damages in mandamus proceedings, under Laws 1895, page 118, section 26, cannot, after having prosecuted to final judgment an action for mandamus against a sheriff to recover possession of exempt property levied on by him, institute a second action to recover damages for the unlawful detention of the same property: *Achey v. Creech*, 21 Wash. 320, 58 Pac. 208.

Costs in.—Where a writ of mandate issues out of the supreme court to a judge of the superior court to compel him to reinstate an appeal from a justice of the peace, which he had improperly dismissed, judgment for costs should be rendered against the real party in interest and not against the superior judge, except in case of willful misconduct or dereliction of duty on his part warranting it: *State v. Reid*, 17 Wash. 267, 49 Pac. 517.

§ 5769. Prohibition—Jurisdiction in.—Article 4, section 4, of the state constitution, conferring original jurisdiction upon the supreme court to issue the writ of prohibition, must be construed in the light of the law defining the writ of prohibition which was in force at the time or the adoption of the constitution; and the law then in force having restricted the writ to its common-law function for the restraint of unauthorized judicial or quasi judicial power, the original jurisdiction of the supreme court is not extended to include ministerial and administrative acts by Ballinger's Code, section 5769, which provides that the writ of prohibition shall arrest the proceedings of any tribunal, corporation, board, or person, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board, or person. Original jurisdiction to restrain such acts is in the superior court: *Winsor v. Bridges*, 24 Wash. 540, 64 Pac. 780.

The supreme court has jurisdiction to prohibit the superior court from proceeding with the trial of an appeal from a justice of the peace, when the superior court has not properly acquired jurisdiction of the appeal: *State of Washington ex rel. v. Superior Court of King Co.*, 17 Wash. 54, 48 Pac. 733.

Prohibition will not lie to restrain the board of state land commissioners from discharging the administrative duties imposed upon them in the leasing of the harbor areas of the state under the provisions of Laws 1897, page 255, section 53: *State ex rel. White v. Board*, 23 Wash. 700, 63 Pac. 532.

§ 5770. Affidavit of attorney sufficient.—Affidavit filed upon an application for a writ of prohibition made by the attorney

of petitioner, instead of by the petitioner himself, does not render the application insufficient under the statute requiring the affidavit to be made by the person beneficially interested, when the affidavit was made in behalf of the petitioner by his attorney, who was more cognizant of the facts in the case.

When proper remedy.—Prohibition will lie to restrain a court from vacating its own judgment on the ground of irregularity in that there is no proof of service of summons upon defendants of record, when the judgment itself contains a recital of due service and there is no showing in support of the motion to vacate that process had not in fact been served: *State ex rel. Boyle v. Superior Court*, 19 Wash. 128, 67 Am. St. Rep. 724, 52 Pac. 522, 1013.

The action of the superior court in granting a writ of prohibition to prohibit a justice of the peace from further proceeding in the prosecution of a defendant for a misdemeanor because, as viewed by the superior court, the justice was proceeding without jurisdiction and his conclusion would be void, will not be disturbed on appeal to the supreme court therefrom, when it is questionable whether the defendant would have an adequate remedy by appeal from the judgment of the justice: *State v. Kennan*, 25 Wash. 621, 66 Pac. 62.

Where plaintiff's death had been put in issue by the pleadings, but no evidence submitted thereon, a verdict for plaintiff disposed of the issue; and, where the court, subsequent to verdict, undertakes to permit the question of plaintiff's death to be tried, prohibition will lie to restrain its action: *State ex rel. Holgate v. Superior Court*, 21 Wash. 33, 56 Pac. 932.

Where a county treasurer attempts to correct the return of the assessor by charging the owner of property with the proper amount of taxes assessable against it, upon notice to the owner and a hearing thereon, the county treasurer exercises judicial functions, and, where he acts without or in excess of his jurisdiction, prohibition will lie against him: *State ex rel. Lewis v. Hogg*, 22 Wash. 646, 62 Pac. 143.

Where a board of education is by law constituted a tribunal, from which there is no appeal, for the trial of its school officers, a member of the board who has caused charges to be preferred against a school superintendent because of personal hostility toward him, and has announced a determination to vote against him, whatever the evidence, is disqualified to sit as a member of such tribunal during the trial of the superintendent, and, if he attempts to participate as a member of the tribunal, may be restrained by the issuance of a writ of prohibition: *State v. Board of Education, Seattle*, 19 Wash.

8, 67 Am. St. Rep. 706, and note, 52 Pac. 317.

When not proper remedy.—The writ of prohibition will not issue to restrain the superior court from entertaining an appeal from the order of a board of county commissioners establishing a county road, since there is an adequate remedy by appeal from the judgment of the superior court: *State ex rel. v. Superior Court*, 30 Wash. 702.

A writ of prohibition will not lie to restrain the superior court from canceling and vacating a notice of *lis pendens*, which had been filed by an appellant after taking an appeal from the judgment of said court, since the action of the court in such matter is reviewable upon appeal: *State ex rel. Sligh v. Superior Court*, 19 Wash. 118, 52 Pac. 1009.

Prohibition will not lie to restrain a superior court from proceeding in the exercise of its probate jurisdiction in a case on the ground that the court of another county has subsequently assumed jurisdiction, and is properly entitled thereto: *State ex rel. Warren v. Superior Court*, 17 Wash. 127, 49 Pac. 226.

The writ of prohibition will not issue to prevent the superior court's proceeding with the trial of an action, of whose subject matter it has jurisdiction, when the court erroneously assumes jurisdiction of the parties on irregular service of summons and of garnishment, as such error is reviewable on appeal from final judgment in the action, as one occurring in the progress of the cause leading up to the final judgment: *State ex rel. Vincent v. Benson*, 21 Wash. 571, 58 Pac. 1066.

Since the action of the superior court in granting a motion for a new trial is appealable, although done without jurisdiction, prohibition will not issue to restrain the court from proceeding with a retrial: *State ex rel. v. Superior Court*, 21 Wash. 631, 59 Pac. 505.

Where a tribunal has jurisdiction of the subject matter in controversy, prohibition will not lie against it to prevent injury merely because the complaint and summons are insufficient, where there is an adequate remedy provided by appeal or writ of review: *State v. Hogg*, 22 Wash. 646, 62 Pac. 143.

The fact that there is no appeal provided from the judgment of the county treasurer in exercising the power conferred on him by Ballinger's Code, section 1741, to correct the assessor's return, will not warrant the issuance of a writ of prohibition against the treasurer, when any error in the judgment rendered by him is correctible by writ of review: *Id.*

Prohibition will not lie to restrain the superior court from passing upon questions raised by demurrer, when it has jurisdiction, even if such jurisdiction is erroneously exercised; and the fact that no

remedy is afforded by appeal or certiorari for the review of such erroneous action would not alter the rule: *State v. Superior Court*, 30 Wash. 156, 70 Pac. 230.

There being a remedy by appeal from the judgment of the superior court in regard to the distribution of a decedent's estate, the court will not be restrained by writ of prohibition from proceeding in the matter, although it may be acting without jurisdiction: *State ex rel. v. Superior Court*, 30 Wash. 700, 71 Pac. 648.

The adequacy of the remedy by appeal is not affected by the expense thereof, nor by the delays and annoyances incident to an appeal: *Id.*

Prohibition will not lie to restrain the superior court from ordering a sale by a receiver appointed by the court of property in his trust, as parties aggrieved by such an order have an adequate remedy by appeal: *State ex rel. Newland v. Superior Court*, 16 Wash. 444, 47 Pac. 965.

The fact that a petition for a writ of mandate does not state facts sufficient to entitle the relator to relief is not ground for restraining the superior court by writ of prohibition from proceeding to try the cause, when it has jurisdiction of the subject matter and the error complained of is capable of correction on appeal or by certiorari. The writ of prohibition is never issued unless the inferior court is about to exceed its jurisdiction: *State v. Moore*, 23 Wash. 115, 62 Pac. 441.

Prohibition will not lie to restrain the superior court from further proceeding in an action to condemn a stream as a right of way for logging purposes, on the ground of a removal of the cause from the jurisdiction of the trial court by appeal, where the appeal was from an order overruling a demurrer to the petition, although such demurrer raised the question of public use, and Laws 1901, page 213, provide that "either party may appeal from the order of the court adjudicating or refusing to adjudicate that the contemplated use of the property sought to be appropriated is really a public use," since the ruling was simply upon the demurrer (which was not an appealable order), and was not an adjudication upon the facts, from which latter character of order only would an appeal lie: *Parker v. Superior Court*, 25 Wash. 544, 65 Pac. 154.

§ 5780. Quo warranto—Against whom information may be filed—Contested elections of cities.—Where a city council of a city of the third class has provided no procedure for carrying on a contest for city offices, under Ballinger's Code, section 937, authorizing the city council to determine contested elections of all city officers, the superior court is not ousted of its jurisdiction to try election contests

therein by a proceeding in the nature of quo warranto: *State v. Peter*, 21 Wash. 243, 57 Pac. 814.

Of private corporations.—The stockholders of a corporation have such an interest in the offices thereof as will warrant them in proceeding by information in the nature of quo warranto for the purpose of ousting those illegally holding office therein: *State ex rel. Mitchell v. Horan*, 22 Wash. 197, 60 Pac. 135.

Under the rule requiring remedial statutes to be liberally construed, the word "person" should be construed as including a corporation, and "public franchise" as including the exercise of the right to open and use city streets for laying gas pipes: *State ex rel. v. Gas etc. Co.*, 28 Wash. 488, 68 Pac. 946.

By whom information may be filed.—The attorney general has no authority, even under the common-law powers, if any, inhering in his office, to institute such an action of quo warranto: *State ex rel. v. Seattle Gas etc. Co.*, 28 Wash. 489, 68 Pac. 946.

Cities of the first class being empowered by Ballinger's Code, section 739, to regulate and control the streets and alleys therein, and given power to provide for lighting the streets and all public places by gas or other lights, an information in the nature of quo warranto against a corporation, to prevent its laying gas pipes in the streets of a city, does not state facts sufficient when it fails to affirmatively show either that the information was filed at the request and on behalf of the city, or that the city authorities were not discharging the duty imposed upon them by law in properly controlling the use of the streets: *Id.*

A decree dismissing on the merits an information in the nature of quo warranto is proper where it is essential to the cause of action that the suit be brought or authorized by the officer charged by law with the duty of instituting the suit, and it was in fact brought by another officer on his own motion: *Id.*

The fact that defendant had waived the objection that an action was improperly brought in the name of the attorney general instead of that of the prosecuting attorney could not be urged by the attorney general, when by statute the authority to bring the action was expressly vested in the prosecuting attorney: *Id.*

§ 5798. Of contempts and punishment therefor—By newspaper publication.—Under the inherent power vested in courts by the common law respecting the punishment of contempts and under the authority of Ballinger's Code, section 5798, the publication in a newspaper, while a cause is pending on appeal before the supreme court, of an article reflecting on the integrity of the court, or of one of

the judges thereof, and which tends to embarrass and disturb the conclusion of the court in the determination of the cause pending before it, is such conduct as to warrant the court's proceeding against the offender by attachment for contempt. A cause on appeal to the supreme court of this state remains pending, and within the jurisdiction of the court to make any modification of its decision, until the final judgment has been rendered and the remittitur issued thereon: *State v. Tugwell and Baker*, 19 Wash. 238, 52 Pac. 1056.

By refusal to pay alimony.—The court has power to punish for contempt for failure to comply with an order for the payment of alimony, although the decree awarding alimony may have been made a lien upon the defendant's realty. A finding by the trial court that defendant is able to satisfy a decree of alimony against him is warranted when it is shown that he has been able to borrow more than double the amount of the decree to apply in other ways. The fact that attachment did not issue against the defendant in contempt proceedings is not a matter of which he can complain, when he has voluntarily appeared in the action. Demand upon defendant to pay a decree of alimony against him is unnecessary, prior to proceedings for contempt, when it is shown that defendant asserted he would never obey the decree: *State ex rel. Ditmar v. Ditmar*, 19 Wash. 325, 53 Pac. 350.

By refusal to apply money to satisfaction of judgment.—The court has no authority to punish defendant for contempt in refusing to apply money in his possession toward the satisfaction of a judgment, as ordered by the court in supplemental proceedings, where the fact of such refusal is brought to the attention of the court by the return of the sheriff and not by way of an affidavit: *In re Coulter*, 25 Wash. 527, 65 Pac. 759.

Ballinger's Code, section 5798, subdivision 5, which provides that disobedience of any lawful judgment, decree, order or process of a court shall be deemed a contempt of court, applies only to such as stand in the relation of parties to the action, or in privity with, or in the position of servant, agent, or employee of, the nominal parties, and who are in some way designated as subject to the orders of the court: *State v. Peterson*, 29 Wash. 571, 70 Pac. 71.

Refusal to surrender property to receiver.—Failure to comply with an order of court directing that the property of a corporation be turned over to a receiver will not subject a person to punishment for contempt, where he was not a party to the proceeding in which the receiver was appointed and in which the order was made, and where he retains possession of the property in good faith in the belief

that it probably belongs to others than the corporation: *State v. Denham*, 30 Wash. 643, 71 Pac. 196.

§ 5801. Contempt—Constructive — Affidavit of, sufficiency.—Under Ballinger's Code, section 5801, which provides that when a contempt is not committed in the immediate presence of the court, the facts constituting the contempt must be shown by an affidavit presented to the court, the court cannot assume jurisdiction of a contempt proceeding upon an affidavit reciting that a certain newspaper contained statements showing that defendant was guilty of the contempt charged: *State v. Canutt*, 26 Wash. 68, 66 Pac. 130.

The statutory requirement that matters constituting contempt must be shown by affidavit presented to the court is satisfied by the filing of a written declaration in the form of a complaint, properly sworn to and certified, when such declaration is intended to constitute an affidavit: *State v. Peterson*, 29 Wash. 571, 70 Pac. 71.

The fact that one attached for contempt was ordered arrested and brought before the court without bail and without the designation of a return day in the warrant, was not prejudicial error where the record shows that, when brought into court, he was allowed time to plead, and, in the meantime, to go upon his own recognizance: *Id.*

§ 5808. Imprisonment for—When inflicted.—The superior court having no power to enforce the payment of money judgments by imprisonment, it cannot imprison parties to a divorce suit for refusing to obey an order disposing of money in controversy, under the provision authorizing the court to imprison a party, when his contempt consists in refusing to perform an act which he is able to do, since such statute applies only to acts which the court may legally require a party to perform: *In re Van Alstyne*, 21 Wash. 195, 57 Pac. 348.

Under Ballinger's Code, section 5808, which provides that where contempt consists in the omission or refusal to perform an act which is in defendant's power to perform, he may be imprisoned until he shall have performed it, a defendant who refuses to pay a decree of alimony awarded against him may be imprisoned for contempt without being cited therefor, when he is personally before the court and it appears that he has money in his possession and under his control with which to pay the same: *In re Cave*, 26 Wash. 213, 90 Am. St. Rep. 736, 66 Pac. 425.

§ 5826. Habeas corpus — Restrictions upon right.—The legality of an order committing for contempt parties to a divorce suit, for their failure to comply with a previous order requiring the payment into court of the money decreed to be due the adverse party, may be inquired into in

habeas corpus proceedings, under Ballinger's Code, section 5826, which excepts from the prohibition against inquiring into the legality of any judgment or process whereby a party is in custody such orders of commitment for contempt as arise upon proceedings to enforce the remedy of a party: *In re Van Alstine*, 21 Wash. 194, 57 Pac. 348.

Although the court in proceeding in a contempt matter without having the facts constituting it shown by affidavit may be merely erroneously exercising jurisdiction, rather than acting without jurisdiction, yet the legality of the order of commitment may be inquired into by writ of habeas corpus, under Ballinger's Code, section 5826: *In re Coulter*, 25 Wash. 527, 65 Pac. 759.

The action of a justice of the peace in fining the accused, upon the failure of the jury to fix his punishment, when, under Ballinger's Code, section 6669, the jury was charged with the duty of assessing the punishment for any prisoner whom they might find guilty, although erroneous, was not void, where the justice had jurisdiction of the person and the subject matter; and habeas corpus will not lie to secure the prisoner's release from commitment under such erroneous judgment, but the proper remedy is by appeal: *In re Casey*, 27 Wash. 686, 68 Pac. 185.

§ 5828. **Writ of, to let to bail.**—Bail is not authorized pending appeal in habeas corpus proceedings in extradition cases, under the statutory provision that a writ may issue for the purpose of admitting a party to bail who is charged with an offense against the laws of the state: *Id.*

The only question in habeas corpus proceedings in an extradition case is to determine whether the conditions prescribed by the United States constitution and laws of Congress have been complied with: *In re Foye*, 21 Wash. 250, 57 Pac. 825.

§ 5841. **Assignment for benefit of creditors—A conveyance of all debtor's property by way of preference is not an assignment.**—A conveyance by a debtor in embarrassed circumstances of all his property for the payment of certain preferred creditors does not amount to a general assignment with preferences, which is voidable under the insolvency statutes of this state; also as to partnership debts: *Vietor v. Glover*, 17 Wash. 38, 48 Pac. 788.

Possession of assets by assignee cannot be disturbed by mortgagee to foreclose.—Where an assignment of all a debtor's property has been made for the benefit of creditors, the assigned property passes as a trust fund into the assignee's hands as an officer of court, and a mortgagee of a portion of such property under a mortgage giving a right of possession and power of sale in case of default is not entitled to

withdraw same from the hands of the assignee for purposes of foreclosure.

Expenses of assignment.—The reasonable expenses incident to an assignment proceeding are entitled to payment from the trust fund for creditors in the assignee's hands, even if their payment, by reason of the smallness of the estate, necessarily impairs the amount due under prior mortgage liens. The expenses of litigation incurred by reason of the unsuccessful attack of creditors of an insolvent debtor upon preferential mortgages made by him prior to an assignment are not properly chargeable against the estate in the assignee's hands: *Thompson v. Sines*, 18 Wash. 359, 51 Pac. 474.

§ 5843. **Assigned property in control of court.**—When an assignment for the benefit of creditors has been made by an insolvent firm, authority and control over the property are conferred by law upon the court, and the assignee is not subject to garnishment on the ground that he is in possession of the debtor's property under a invalid assignment: *Smith v. Cullen*, 18 Wash. 398, 51 Pac. 1040.

§ 5871. **Chattel mortgages—Foreclosure by notice and sale.**—A sheriff's return of service upon a defendant of notice of the sale of mortgaged chattels is insufficient, when it recites service as made upon the defendant by leaving a copy with the father of said defendant "at his usual place of residence," there being no recital that the defendant could not be found nor that the attempted service upon the father was made at the dwelling-house of the defendant: *Mitchell, Lewis & Staver Co. v. O'Neil*, 16 Wash. 108, 47 Pac. 235.

A constable has no authority to foreclose a chattel mortgage by notice of sale: *Pickle v. Smalley*, 21 Wash. 473, 58 Pac. 581.

A constable has no authority to foreclose a chattel mortgage by notice and sale: *Jacobson v. Aberdeen Packing Co.*, 26 Wash. 175, 66 Pac. 419.

§ 5876. **Foreclosure of, contested—Injunction.**—Where an order is made by the court, removing the foreclosure of a chattel mortgage into the superior court, and directing the sheriff to return the possession of the property to its owner, the subsequent willful interference by an agent of the mortgagee with the custody of the property was a violation of the order rendering him guilty of contempt; and the fact that no bond was given by the owner upon the issuance of the order directing the return of the property to him would not excuse compliance with the order, since the court is authorized, under the statute, to make the order as an incident to the jurisdiction assumed by it in the

foreclosure proceedings: *State v. McFaul*, 27 Wash. 286, 67 Pac. 564.

§ 5878. Mortgagee may foreclose, when. A provision in a chattel mortgage authorizing the mortgagee, in case of default or insecurity of the debt, to take possession of the mortgaged property, "using all necessary force to do so," does not warrant the mortgagee or a sheriff in taking possession thereof over the objections of the mortgagor, but, in the absence of the mortgagor's consent, the contract can be enforced only by due process of law: *McClellan v. Gaston*, 18 Wash. 472, 51 Pac. 1062.

§ 5880. Remedies of mortgagee—Decree—Sale—Deficiency.—Where a mortgagee of chattels takes possession of the property and sells same without foreclosing the mortgage, he is not entitled to recover for a deficiency: *Mitchell, Lewis & Staver Co. v. O'Neil*, 16 Wash. 108, 47 Pac. 235.

§ 5885. Of foreclosure of mortgages on real estate—Venne.—Two mortgages securing the same debt, but covering land in different counties, may properly be foreclosed in either county, as they should be regarded as one instrument. An allowance of \$800 attorney's fees for the foreclosure of a mortgage for \$1,100 will not be set aside when the mortgage provides for a reasonable attorney's fee, although the notes themselves specify \$300 as the attorney's fee: *Commercial Nat. Bank of Seattle v. Johnson*, 16 Wash. 536, 48 Pac. 267.

Adverse title in.—An allegation in a complaint for foreclosure of a mortgage that one of the defendants "claims some interest in or title to said property inconsistent with the rights of the plaintiff," does not amount to an allegation of adverse title, when taken in connection with other allegations of the complaint which show that the intent of the pleader was to charge that such interest, whatever it might be, was subordinate to that of plaintiff: *Kizer v. Caufield*, 17 Wash. 417, 50 Pac. 1064.

Under the rule that questions of paramount title cannot be tried in suits for foreclosure of mortgages, a wife is not bound by a decree in a foreclosure proceeding which finds that her husband was the sole and separate owner of the property and that she had no interest therein, even though she was made a party to the suit because of having joined in the execution of the note, was personally served, and made defendant therein: *Oates v. Shuev*, 25 Wash. 597, 66 Pac. 58.

§ 5888. Deficiency judgment—When awarded.—A deficiency judgment is warranted, upon foreclosure of a mortgage, when the prayer of the complaint asks for judgment against defendant for the sum secured, that the mortgage be foreclosed, the premises sold and the proceeds applied upon the mortgage, and for gen-

eral relief: *Rogers v. Turner*, 19 Wash. 399, 53 Pac. 663.

§ 5888a. Judgment of foreclosure limited to mortgaged property.—The act of March 11, 1897 (Laws 1897, p. 98), prohibiting deficiency judgments in all proceedings for the foreclosure of mortgages, is unconstitutional and void, as being an undue restraint upon the liberty of the citizen, affecting property rights: *Dennis v. Moses*, 18 Wash. 538, 52 Pac. 333.

§ 5890. Execution of decree—Proceedings under.—Code of Procedure, section 630, providing for the mode of selling mortgaged land under foreclosure is not impliedly repealed by Laws 1897, chapter 50, page 70: *State ex rel. v. Moyer*, 17 Wash. 643, 50 Pac. 492.

Code of Procedure, section 630 (Bal. Code, § 5890), is impliedly repealed by Laws 1897, page 70, section 1 (Bal. Code, § 5273): *Dennis v. Moses*, 18 Wash. 538, 52 Pac. 323.

Execution and decrees declaring that sales of real property under execution shall be made one year after the filing of the levy, can only be waived by the judgment debtor after default, and a stipulation for an immediate sale after decree made in the instrument creating the debt is unenforceable, except in so far as a court of equity may be inclined to take cognizance of its provisions for enforcement or not, as seems just: *Id.*

§ 5893. Concurrent action cannot be maintained.—The fact that a mortgagee prosecuted another action for the same matter while foreclosing his mortgage, although contrary to the provisions of Ballinger's Code, section 5893, cannot be urged by way of collateral attack upon the judgment of foreclosure: *Rohrer v. Snyder*, 29 Wash. 199, 69 Pac. 748.

§ 5894. Foreclosure of mortgage—Installments not due.—Ballinger's Code, section 5894, has reference to the foreclosure of mortgages upon which there may be due interest for which foreclosure may be had, and does not subject to foreclosure a mortgage whose terms otherwise provide: *Bank v. Doherty*, 29 Wash. 233, 92 Am. St. Rep. 903, 69 Pac. 732.

§ 5900. Of liens of mechanics and materialmen—Agent of owner, who is.—Where a lessee of lands is accorded the privilege of erecting a building thereon, which shall become the property of the lessor on the termination of the tenancy, but the privilege is wholly optional with the lessee, and no enforceable contract exists whereby he is required to build, the fee cannot be subjected to mechanics' liens incurred by the lessee, as the lessee can in no sense be held to be the agent of the owner, under the statutory provision (Bal. Code, § 5900) that every person performing labor upon, or furnishing material to be used in, the construction of

buildings has a lien thereon, whether performed or furnished at the instance of the owner of the property or his agent; and that any person having charge of the construction, alteration or repair of any property subject to lien shall be held to be the agent of the owner for the purpose of the establishment of the liens: *Stetson Post Mill Co. v. Brown*, 21 Wash. 619, 75 Am. St. Rep. 862, 59 Pac. 507.

Sufficiency of complaint.—A complaint for the enforcement of a materialman's lien for materials furnished a contractor for the erection of a dwelling-house states a cause of action when it alleges an agreement between the owner and the contractor for furnishing and doing plumbing work upon the house, and that plaintiffs sold the contractor materials to be used, and which were actually used, in the construction of the building, an averment of agency being unnecessary, under Laws 1893, page 32, section 1 (Bal. Code, § 5900), which provides that every contractor shall be held to be the agent of the owner for the purpose of the establishment of the lien created by that act: *Griffith v. Maxwell*, 20 Wash. 403, 55 Pac. 571.

Nonlienable item, effect of inclusion.—The fact that a nonlienable item was included in a lien notice would not destroy the entire lien, where there is plainly no fraud attempted, and the lienable and nonlienable items are separable so as to enable the court to render a decree for the proper amount: *Powell v. Nolan*, 27 Wash. 319, 67 Pac. 712.

§ 5901. Land subject to lien.—The owner of land may be charged with mechanics' liens, through the construction of a building thereon by a lessee, when the contract between landlord and tenant, while in effect a lease, at the same time is equivalent to a building contract, authorizing the lessee to proceed with the construction as the agent of the owner: *Kremer v. Walton*, 16 Wash. 139, 47 Pac. 238.

Leasehold interest.—The lien for materials furnished a lessee for the repair of a building attaches to the realty and not to the leasehold interest, when the lessee was authorized by the owner of the premises to have the repairs made: *Sheehan v. Winchill*, 18 Wash. 447, 51 Pac. 1065.

Where a person causes the erection of a building upon lands in which he holds less than a fee simple title, only his interest in the lands can be subjected to the liens of persons performing labor upon, or furnishing materials to be used in, the construction of such building: *Merritt v. Corey*, 22 Wash. 462, 61 Pac. 171.

Laws 1893, chapter 24, page 32, being a complete act upon the subject of liens of mechanics and materialmen, and providing

in section 2 that if the person causing the construction, alteration or repair of any building own less than a fee simple in such land, then only his interest therein is subject to the lien, and the repealing clause being to the effect that all acts or parts of acts in conflict with its provisions are thereby repealed, it must be construed that the act of 1893 works a repeal of General Statutes, section 1671, provides that should the owner of any land desire to prevent the lien from attaching, he may do so by giving notice in writing, posted in some conspicuous place upon said land or improvement, to the effect that he will not be responsible for said improvement: *Stetson Post Mill Co. v. Brown*, 21 Wash. 620, 75 Am. St. Rep. 862, 59 Pac. 507.

§ 5902. Lien of laborer for improvement of land.—One who clears lands under a contract with the owner is entitled to a lien thereon, under the provisions of Ballinger's Code, section 5902, which declares that any person who at the request of the owner of any real property clears the same has a lien thereon for the labor performed, and under *Id.*, section 5911, recognizes the right of contractors to such liens, after satisfaction of the prior claims of laborers, materialmen and subcontractors: *Stringham v. Davis*, 23 Wash. 568, 63 Pac. 230.

Ballinger's Code, section 5902, gives a lien upon real property to any person who, at the request of the owner, clears, grades, fills in or otherwise improves any street or road in front of or adjoining the same for labor performed or materials furnished for such purpose, is not unconstitutional on the ground of depriving the owner of his property without due process of law: *Young v. Borzone*, 26 Wash. 5, 66 Pac. 421.

§ 5903. Priority of lien over liens and encumbrances.—Under Laws 1893, page 33, sections 4, 5, when a claim of lien for labor is filed within the statutory time, the lien therefor relates back to the time of commencement of the labor and has priority over a mortgage subsequently executed on the premises, although the claim of lien may not be filed until after foreclosure proceedings have been instituted by the mortgagee and after notice of lis pendens filed: *Nason v. Northwestern Milling etc. Co.*, 17 Wash. 142, 49 Pac. 235.

Laches in asserting.—The right to priority of lien over a mortgage debt in favor of a claim for supplies furnished a railway company is not lost by laches in asserting it, if an action at law to enforce the demand has not been barred by the statute of limitations: *B. B. Imp. Co. v. Fairhaven Ry. Co.*, 17 Wash. 372, 49 Pac. 514.

Under Ballinger's Code, section 5903, where materials have been furnished in ignorance of the real title, to persons in undisputed possession claiming ownership under an executory contract for the sale of land, which had not been recorded and which was forfeitable for breach of conditions therein, the lien for such materials is entitled to priority over the rights of the vendor, although entitled to a forfeiture under the contract and although the record title has been in the vendor during the whole time: Bell v. Grooves, Bell v. Swalwell Land etc. Co., 20 Wash. 602, 6 Pac. 401. *against the weight of authority.*

A mortgage to secure future advances is entitled to priority over the liens of mechanics and materialmen, if recorded prior to the performance of service or furnishing of materials, even if a portion of the advances are not made until after the mechanics' liens have attached, under General Statutes, section 1666, according mechanics' liens preference to any lien or mortgage which may have attached subsequently to the time when the building was commenced, work done or materials furnished, or which was unrecorded at that time, or of which the lienholder had no notice, at the commencement of furnishing services or material: Home Sav. etc. Assn. v. Burton, 20 Wash. 688, 56 Pac. 940.

Same—When liens attach.—Materialmen and laborers can claim liens only from the time they commence to furnish materials or perform labor, and they cannot be subrogated to the rights of the contractors, in order to have their claims date back to the time the latter commenced work on the building: Id.

The parties to a contract for the sale of land occupy the relation of mortgagor and mortgagee. The vendor's lien for the purchase money, the legal title being in him, is superior to the lien of a mechanic or materialman who began to furnish labor or material for the construction of improvements on the property, after the sale under a contract therefor with the vendee: Baker v. Sinclair, 22 Wash. 462, 61 Pac. 171.

A mortgagee of premises upon which there was at the time a house in course of construction, for which the contractor was entitled to a prior lien, cannot complain that payments made by the owner were applied first toward the satisfaction of the contractor's demand for extras, where there was no collusion shown between the parties, and most of the extras had been furnished prior to the execution of the mortgage, and the mortgage security had been in no way impaired by such application of the payments made: Powell v. Nolan, 27 Wash. 318, 67 Pac. 712.

SUPP. WASH. CODE.—40

§ 5904. Sufficiency of claim or notice.—

Where a notice of claim of lien and a complaint for its foreclosure both describe the lot and block in an addition to the city in the same terms, but refer to the house by different street numbers, the variance is not fatal, when there is but one house upon the lot, and the description given, though slightly inaccurate, would render it readily capable of identification. A copy of a lien notice in the record showing that it was verified before a notary imports that his official seal was attached to the original, although the copy contains the word "seal" written after his name, instead of an impression of the seal itself: Griffith v. Maxwell, 20 Wash. 404, 55 Pac. 571.

Under Ballinger's Code, section 5904, which provides that a lien notice may be amended the same as pleadings, after action brought to foreclose the same, by order of the trial court, if the interests of third parties are not thereby affected, the supreme court will treat a defective lien notice as it does a defective pleading, and, where the insufficiency of the lien notice was not particularly pointed out to the trial court, will consider it as amended in all cases where substantial justice has been done, and the alleged defect has not operated to the injury of the complaining party: Olson v. R. R. Co., 22 Wash. 139, 60 Pac. 156.

In an action for the foreclosure of a mechanic's lien, the reading by the county auditor of the original record of the claim of lien and its filing is competent evidence of the lien and its record, especially when it is stated at the time that a certified copy would be thereafter introduced in evidence: Greene v. Finnell, 22 Wash. 186, 60 Pac. 144.

Under the mechanics' lien law of 1893, the failure to state the terms of the contract for the construction of the building will not render a lien notice defective: Id.

When a lien notice is offered in evidence for the purpose of establishing a lien, all questions going to its sufficiency should be raised at the time it is offered, since the notice is subject to amendment, under the existing lien law: Id.

A lien notice which states that the lienor performed labor at the request of another is equivalent to saying that he was employed by the other, and is sufficient: Young v. Borzone, 26 Wash. 5, 66 Pac. 421.

Failure to include the husband's name in a lien notice as one of the reputed owners of the premises is not a ground of objection of the claim of lien, when it does not appear upon the face of the notice that the claimant had knowledge at

the time of the husband's interest: *Powell v. Nolan*, 27 Wash. 320, 67 Pac. 712.

§ 5907. Segregation of claims.—Under Ballinger's Code, section 5907, where the claimant had an entire contract for labor and material on four houses, it was unnecessary for him to file separate lien claims, but it was sufficient if the amount chargeable against each house was separately alleged: *Powell v. Nolan*, 27 Wash. 320, 67 Pac. 712.

In an action for the foreclosure of mechanics' liens, where a complaint alleges the furnishing of labor and materials for the improvement of a designated mining claim, and then adds it is contiguous to land adjoining another designated claim held and operated by defendant as a group, and that the materials so furnished were for the development of both lodes which were held by defendant as constituting one mine, a decree including both mining claims is warranted in giving judgment on the pleadings, where there is no denial of the allegations of the complaint: *Sly v. Mining Co.*, 28 Wash. 485, 68 Pac. 871.

§ 5908. Limitation of actions.—The fact that contractors for the erection of a building, after promptly objecting to an award of arbitrators and filing a lien on the building, delay nearly the full period of time before commencing an action to foreclose their lien and set aside the award would not estop them from recovering: *McDonald v. Lewis*, 18 Wash. 300, 51 Pac. 387.

Under Ballinger's Code, section 5908, limiting the duration of a mechanic's lien to eight calendar months after the filing of the claim, unless an action be commenced within that time to enforce it, one seeking to foreclose a mechanic's lien must affirmatively show that the property is subject to the lien at the time his action is brought, and the objection that the action was not brought in time may be first urged on appeal, though not raised on the trial below: *Peterson v. Dillon*, 27 Wash. 78, 67 Pac. 397.

Where an action to enforce a lien on community property is not commenced against both spouses within eight calendar months after its filing, it cannot be enforced against the community, even though the action had been timely instituted against one of the spouses: *Powell v. Nolan*, 27 Wash. 320, 67 Pac. 712.

§ 5909. Extent of contractor's lien—Rights of owner.—Under Ballinger's Code, section 5909, which provides that the contractor shall recover on the claim filed by him the amount thereof, after deducting the claims of other parties for labor and material, and *Id.*, section 5911, which provides for the payment of liens claimed in the following order: (1) All

persons performing labor; (2) all persons furnishing material; (3) the subcontractors; (4) the original contractors, a contractor has a lien for his contract price, although he furnished no material or performed no labor other than overseeing the construction of the building: *Powell v. Nolan*, 27 Wash. 320, 67 Pac. 712.

§ 5910. Parties to foreclosure.—Laws 1893, page 36, section 11, has reference only to the enforcement of liens for labor and material and does not restrain the holder of a mechanic's lien from bringing a separate action for its enforcement while a mortgage foreclosure is pending: *Nason v. Milling etc. Co.*, 17 Wash. 142, 49 Pac. 235.

Where an action to foreclose a mechanic's lien on community property was brought against the husband alone, and the wife was not made a party until after the expiration of the statutory life of the lien, a judgment against the community for the debt and for the foreclosure of the lien is valid only as a personal judgment, and is void in so far as it attempts to foreclose the lien: *Peterson v. Dillon*, 27 Wash. 78, 67 Pac. 397.

In an action to foreclose a mechanic's lien upon community property both husband and wife must be brought in as parties, in order to give the judgment rendered any validity as against the community, since service of summons on one spouse is not the commencement of an action as to the other spouse: *Powell v. Nolan*, 27 Wash. 318, 67 Pac. 712.

An action to foreclose a mechanic's lien, under Ballinger's Code, sections 5900-5918, is an equitable action, and parties thereto have no right to demand a jury trial: *Id.*

A contractor who is primarily liable for materials furnished for the construction of a house is entitled to enforce a lien therefor, although the materialman has also filed a lien, where the contractor has requested the owner to pay same out of the balance due him under his contract, and the materialman's lien is unenforceable in the action for want of proper service upon the owner: *Id.*

Evidence—Lien Notice.—The production by plaintiff of a lien notice filed by him, with the auditor's certificate as to the filing and recording of the instrument, and proof of the lienor's signature to the claim and that he had filed the same, constitute a sufficient identification of the lien notice for its admission in evidence: *Powell v. Nolan*, 27 Wash. 320, 67 Pac. 712.

§ 5911. Rank of liens—Attorney's fees. The provisions of the lien law allowing attorney fees for enforcement of liens is valid (*Jolliff v. Brown*, 14 Wash. 156,

distinguished): *Griffith v. Maxwell*, 20 Wash. 404, 55 Pac. 571.

§ 5916. When land not subject to lien, it may be foreclosed as to improvements.

Where a vendor of land who has given an executory contract for its sale, which he is entitled to declare forfeited for non-payment of installments of purchase price due him, stands by and sees materials furnished for improvements made thereon by third parties in ignorance of his rights, under a lease of the premises by his vendee, he is estopped from claiming a forfeiture as to the improvements, and they may be removed and sold, for the purpose of satisfying the lien claims of materialmen and laborers: *Bell v. Swalwell Land etc. Co.*, 20 Wash. 602, 56 Pac. 401.

§ 5919. Liens of laborers—On property, franchises, etc.—Priorities.—Laws 1897, page 55, section 1, must be construed as merely intended to extend the period for which liens were allowed by a prior statute, and not as intended to give such liens priority over mortgages antecedently executed and recorded, in the absence of language clearly expressing the legislative intent to make such a radical provision: *Fitch v. Applegate*, 24 Wash. 25, 64 Pac. 147.

One who has a contract with an employer to do certain labor for him is not deprived of the right of lien given by Laws 1897, page 55, to employees, from the fact that he hired help to assist in the performance of the labor, paying therefor at his own expense, when such hired labor in no wise changed the contract price or the relations between the employer and the lienor: *Blumauer v. Clock*, 24 Wash. 596, 85 Am. St. Rep. 966, 64 Pac. 844.

§ 5920. Notice of lien—Sufficiency of. A complaint for the foreclosure of a laborer's lien sufficiently sets forth facts constituting a cause of action, when, although not incorporating the terms and conditions of the lienor's contract in the body of the complaint, it makes express reference to an exhibit attached to the complaint, in which is set forth a statement of such terms and conditions: *Fitch v. Applegate*, 24 Wash. 25, 64 Pac. 147.

Under a statute giving a lien for labor performed "in the operation of any railway, canal or transportation company, or any water, mining or manufacturing company, sawmill, lumber or timber company," a notice of lien is sufficient, which states that the lien is for labor performed by the claimant at the instance and request of the employer, without particularizing what the claimant was employed to do or what he did do: *Id.*

§ 5922. Foreclosure of lien. — The joinder as parties plaintiff of persons seeking to foreclose liens for labor given by

Laws 1897, page 55, is proper, since the act provides for the enforcement of the liens in the same manner as mechanics' liens, and the statute (Bal. Code, § 5910) governing in such cases requires the joinder of all lien claimants as parties plaintiff or defendant in any action for the foreclosure of their liens: *Fitch v. Applegate*, 24 Wash. 25, 64 Pac. 147.

The allowance of an attorney's fee to a lien claimant upon a decree of foreclosure in his favor of a laborer's lien is proper, under the terms of the act providing for the enforcement of such liens in the same manner as mechanics' liens are enforced: *Id.*

§ 5925. Public works — Contractor's bond—Effect of.—Where a bond executed by a contractor for the construction of public improvements, under General Statutes, section 2415, in order to protect laborers and materialmen, contains all the conditions required by the statute, the recital that it was taken as a common law, and not as a statutory, bond, would not vitiate it; but the right of action of a materialman on account of supplies furnished is not against the county, but must be enforced against the bondsman and his sureties: *Baym v. Whatcom County*, 19 Wash. 626, 54 Pac. 29.

Where a bond is given by a contractor upon work, under General Statutes, section 2415, to secure laborers and materialmen for labor performed and material furnished therefor, it is immaterial whether the contract between him and the public corporation be executed before or after the execution of the bond: *Lumber Co. v. Loy*, 21 Wash. 501, 58 Pac. 672.

General Statutes, sections 2415, 2416, providing a right of action in favor of laborers and materialmen against counties and municipal corporations, in case they do not exact a bond from contractors upon public works for the protection of such parties, is applicable to contracts by a county for road improvements, under Laws 1893, page 301, although the county may be liable for only one-third of the cost of constructing the road and the balance of cost is assessable against abutting property: *Rounds v. Whatcom County*, 22 Wash. 106, 60 Pac. 139.

In an action at law by a materialman upon the bond given under General Statutes, section 2415, by a contractor upon public works, the refusal of the court to make parties defendant to the suit other than the obligors on the bond is not error, even though the plaintiff may have a right of action against them for the same subject matter: *Spokane & Idaho Lumber Co. v. Boyd*, 28 Wash. 90, 68 Pac. 337.

Where a surety upon a contractor's bond takes an assignment of the contract and undertakes to complete the work him-

self, his liability is not restricted to that imposed by the bond, but he becomes liable for all losses sustained under the contract: *Id.*

The fact that a contractor was insane at the time he obtained a contract from the city for public work, which was known to the city officials, and the fact that the city officials falsely represented

to an assignee of the contract that there was money enough remaining unpaid under the contract to complete the work, would not constitute defenses to an action by a materialman upon the bond given by the contractor for the protection of materialmen and laborers, when the plaintiff is not shown to have participated in the fraud: *Id.*

§ 5927. Contractor's Bond—Conditions of.

The bond mentioned in section twenty-four hundred and fifteen of this volume of general statutes shall be in an amount equal to the full contract price agreed to be paid for such work or improvement, and shall be to the state of Washington, and all such persons mentioned in said section twenty-four hundred and fifteen shall have a right of action in his, her, or their own name or names on such bond, for the full amount of all debts against such contractor, or for work done by such laborers or mechanics, and for materials furnished or provisions and goods supplied and furnished in the prosecution of such work, or the making of such improvements: Provided, That such persons shall not have any right of action on such bond for any sum whatever, unless within thirty (30) days from and after the completion of the contract with and acceptance of the work by the board, council, commission, trustees, or body acting for the state, county or municipality, or other public body, city, town or district, the laborer, mechanic or subcontractor, or materialman, or person claiming to have supplied materials, provisions or goods for the prosecution of such work, or the making of such improvement, shall present to and file with such board, council, commission, trustees or body acting for the state, county or municipality, or other public body, city, town or district, a notice in writing in substance as follows:

To (here insert the name of the state, county or municipality or other public body, city, town or district):

Notice is hereby given that the undersigned (here insert the name of the laborer, mechanic or subcontractor, or materialman, or person claiming to have furnished labor, materials or provisions for or upon such contract or work) has a claim in the sum of dollars (here insert the amount) against the bond taken from (here insert the names of the principal and surety or sureties upon such bond) for the work of (here insert a brief mention or description of the work concerning which said bond was taken).

(Here to be signed)

Such notice shall be signed by the person or corporation making the claim or giving the notice; and said notice after being presented and filed shall be a public record open to inspection by any person: Provided, further, That where by the charter of any city a contractor with such city is required to enter into a bond to such city, for the use of said city and also for the use of all persons who may perform or cause to be performed any work or labor, or furnish or cause to be furnished any skilled labor, or material in the execution of such contract, conditioned to perform the contract and conditioned also to pay as

they become due all just claims for all work and labor upon said contract, and all skill or labor and materials furnished in the execution of such contract, and where such bond is taken to such city in an amount equal at least to the full contract price agreed to be paid for such work or improvement, then no such or additional bond to the state of Washington need or shall be required or taken. [Amendment, approved Mar. 13, 1899; L. 1899, p. 172; to take effect immediately.]

§ 5930. Loggers' liens—Who entitled to lien and when.—Under Laws 1895, page 175 (Bal. Code, § 5930), giving a lien to every person performing labor upon, or who assists in obtaining or securing, saw logs, persons employed under an agreement that they should stand ready to perform work in a logging camp when called upon, being changed and alternated in order that each person might be given a like amount of work, but each and all performing work in securing logs during each month from time of employment until they ceased work upon said logs, are entitled to liens upon all the logs obtained, since the work of each was performed under one continuous contract: *Cross v. Dore*, 20 Wash. 121, 54 Pac. 1003.

Where a laborer employed in getting out saw logs entered into an agreement whereby the employer was not to pay therefor until he had sold the logs to some mill and received the proceeds of the sale, the laborer thereby waived his statutory right of lien by his contract to give his employer the absolute possession and power of disposal of the logs: *Anderson v. Tingley*, 24 Wash. 537, 85 Am. St. Rep. 959, 64 Pac. 747.

One who assists in cutting logs in the woods for a sawmill is entitled to a lien upon the finished product after manufacture at the mill, as long as such product remains under the control of the manufacturer, when the latter is the same party who employed the lien claimant to work in the woods: *Robins v. Paulson*, 30 Wash. 459, 70 Pac. 1113.

§ 5931. Lien on lumber—Definition of terms.—Laborers getting out shingle blocks for one company were entitled to liens on the shingles manufactured therefrom by another company which still retained possession thereof, under Laws 1893, page 428,

section 2, where such shingles had been manufactured under the existing contract between the two companies whereby one was to furnish a specified number of shingle blocks per month and the other was to cut said blocks into shingles at a specified rate per month, and payment was to be made monthly to the company furnishing the blocks in accordance with the number of shingles sold the previous month: *Munroe v. Sedro Lumber etc. Co.*, 16 Wash. 694, 48 Pac. 405.

No lien on shingles sold and delivered in car for shipment, although car was yet on land of makers of the shingles: *Judge v. Bay Mill Company*, 18 Wash. 269, 51 Pac. 378.

§ 5932. Liens for stumpage.—A contract between the owner of land and other parties for logging same would not constitute a waiver of the owner's right of lien upon the logs cut, by reason of provisions in the contract that the loggers were given a certain time to log the land, within which time they were to run the timber out by way of the river to some reliable mill or lumber company on Gray's Harbor and market the same within a reasonable time, leaving with the purchaser of such logs the stumpage agreed upon, since there is nothing in such provision to the effect that the owner agreed not to look for his pay until the logs were sold nor anything else negating the intention of the owner to claim: *Maris v. Clevenger*, 29 Wash. 396, 69 Pac. 1089.

§ 5940. Logger's lien foreclosure—Parties—Procedure.—Where the owner of saw logs is not a party to an action to enforce a lien thereon, the court has no jurisdiction to decree a foreclosure of the lien upon the logs: *Duggin v. Smith*, 27 Wash. 702, 68 Pac. 356.

§ 5941. Sheriff to be Receiver in Actions to Enforce Loggers' Liens.

The sheriff of the county wherein the lien is filed shall be the receiver when one is appointed, and the superior court upon a showing made shall appoint such receiver without notice, who shall be allowed such fees as may seem just to the court, which fees shall be accounted for by such sheriff as other fees collected by him in his official capacity: Provided, That at any time when any property is in the custody of such sheriff under the provisions of this act, and any person claiming any interest therein, may deposit with the clerk of the court in which such action is pending, a sum of money in an amount equal to

the claim sued upon, together with one hundred (\$100) dollars, to cover costs and interest, (unless the court shall make an order fixing a different amount to cover such costs and interest, then such an amount as the court shall fix to secure such costs and interest, which such action is being prosecuted) and shall have the right to demand and receive forthwith from such sheriff the possession and custody of such property: Provided, That in no action brought under the provisions of this act shall costs be allowed to lienholders unless a demand has been made for payment of his lien claim before commencement of suit, unless the court shall find the claimants at time of bringing action had reasonable ground to believe that the owner or the person having control of the property upon which such lien is claimed was attempting to defraud such claimant, or prevent the collection of such lien. [Amendment, approved Mar. 13, 1899; L. 1899, p. 143.]

§ 5941. Logger's lien—Sheriff as receiver — Effect of supersedeas.— Under Laws 1893, page 428, which provide that, in the enforcement of the lien there given upon saw logs and other timber to those employed in getting them out, the sheriff of the county shall be a receiver in the case for the purposes of the act, the statute contemplates that it is part of the remedy for the sheriff to hold such logs until the case is determined and the lien satisfied, and their release cannot be procured by the giving of a supersedeas bond at the time of taking an appeal, or by the deposit in court of the value of the logs: *Anderson v. Tingley*, 20 Wash. 592, 56 Pac. 371.

Demand before suit necessary to entitle plaintiff to costs.—In an action to foreclose laborers' liens on logs, an allowance by the court of costs of suit and attorney's fees to plaintiffs is erroneous, if there is no finding of demand for payment of claims prior to suit, or of reasonable ground on plaintiff's part for believing that defendants would attempt to defraud them or prevent the collection of their claims, since Laws 1899, page 143, provides that in such actions no costs shall be allowed to lienholders unless demand has been made for payment of the lien claim before commencement of suit, or unless the court shall find that the claimants at the time of bringing suit had reasonable ground to believe that the holders of such logs were attempting to defraud the claimants or prevent the collection of such lien: *Fraser v. Rutherford*, 26 Wash. 658, 67 Pac. 366.

§ 5944. Errors do not invalidate lien.— Variance in notice and proof: *Marlette v. Crawford*, 17 Wash. 603, 50 Pac. 495.

§ 5946. Joinder of Actions—Costs.

Any number of persons claiming liens under this chapter may join in the affidavit in section 5936 provided, and may join in the same action, and when separate actions are commenced the court may consolidate them. The court

A purchaser of saw logs within the thirty days during which a lien could be filed thereon, and before the lien notice was actually filed, cannot claim that he was misled by an erroneous statement in the lien notice, especially where he had knowledge of enough facts to put him on inquiry as to claimants' right of lien: *Livingstone v. Lovgren*, 27 Wash. 102, 67 Pac. 599.

A purchaser of logs on which there is a lien, within the thirty days in which the claimant may file his lien notice, must see that the purchase money is appropriated to the satisfaction of the lien, or he is liable upon an implied contract to the lien claimant, up to the full value of the logs: *Id.*

Under Ballinger's Code, section 5942, 5944, which provide that amendments to pleadings in actions to enforce logging liens shall be liberally allowed, and that no mistake or error in the statement of the demand shall invalidate the lien, unless made with intent to defraud, the complaint, and the notice of lien made a part thereof, may be amended upon the trial of the action so as to show that the claim of lien was for logs cut within eight months prior to filing the lien, instead of within nine months prior thereto, as the original complaint and claim had erroneously alleged: *Maris v. Clevenger*, 29 Wash. 396, 69 Pac. 1089.

Under Ballinger's Code, sections 5942, 5944, permitting amendments and declaring that unintentional errors in lien claims should not invalidate same, the right of lien would not be destroyed by the mingling of nonlienable with lienable claims: *Id.*

shall also allow as part of the costs the moneys paid for filing, making and recording the claim, and a reasonable attorney's fee for each person claiming a lien. [Amendment, approved Feb. 28, 1901; L. 1901, p. 20.]

§ 5946. Attorney's fees in cases of joinder of actions.—Laws 1893, page 433, section 17, providing that the court shall allow a reasonable attorney's fee upon foreclosure for each person claiming a logger's lien, is not unconstitutional in any sense, but is permissible upon the same theory that costs are allowed. An

offer by the purchaser of saw logs to pay a lienor the amount of his claim for labor thereon if he would assign his claim to the purchaser is a conditional tender of the sum due and insufficient to defeat the lienor's claim for costs and attorney fees upon foreclosure: *Wall v. Willis*, 17 Wash. 645, 50 Pac. 467.

§ 5953. Liens on Vessels.

That all steamers, vessels and boats, their tackle, apparel and furniture, are liable—

1. For service rendered on board at the request of, or under contract with their respective owners, charterers, masters, agents or consignees.

2. For work done or material furnished in this state for their construction, repair or equipment at the request of their respective owners, charterers, masters, agents, consignees, contractors, subcontractors, or other person or persons having charge in whole or in part of their construction, alteration, repair or equipment; and every contractor, builder or person having charge, either in whole or in part, of the construction, alteration, repair or equipment of any steamer, vessel or boat, shall be held to be the agent of the owner for the purposes of this chapter, and for supplies furnished in this state for their use, at the request of their respective owners, charterers, masters, agents or consignees, and any person having charge, either in whole or in part, of the purchasing of supplies for the use of any such steamer, vessel or boat, shall be held to be the agent of the owner for the purposes of this chapter.

3. For their wharfage and anchorage within this state.

4. For nonperformance or malperformance of any contract for the transportation of persons or property between places within this state, or to or from places within this state, made by their respective owners, masters, agents or consignees.

5. For injuries committed by them to persons or property within this state, or while transporting such persons or property to or from this state. Demands for these several causes constitute liens upon all steamers, vessels and boats, and their tackle, apparel and furniture, and have priority in the order of the subdivisions hereinbefore enumerated, and have preference over all other demands; but such liens continue in force only for a period of three years from the time the cause of action accrued.

Repeal and Saving Clause.

That all acts and parts of acts in conflict with the provisions of this act be, and hereby are repealed: Provided, however, That such repeal shall not in any way affect any proceeding heretofore brought for the enforcement of any lien given by former acts, and shall in no wise affect any lien accrued or existing, by virtue of any former act or acts, upon any steamer, vessel or boat, at the time this act shall go into effect. [Amendment, approved Feb. 28, 1901; L. 1901, p. 21.]

§ 5953a. Willful Breach of Contract.

Whenever the owner, charterer, or any person or corporation operating, managing or controlling any steamship, vessel or boat shall willfully fail, neglect or refuse to carry out or perform any express contract or portion thereof for the towing, loading, unloading, dunnaging or stevedoring of such steamship, vessel or boat, any person or persons, firm or corporation sustaining thereby any loss or damage which is capable of definite ascertainment shall have a lien upon such steamship, vessel or boat for said loss or damage. The rank and priority of the lien hereby created and the manner of its enforcement shall be fixed, controlled and regulated by the provisions of the existing law pertaining to liens for similar services already performed. [Filed without approval Mar. 16, 1903; L. 1903, p. 286.]

§ 5955. For Damages Arising from Torts.

All steamers, vessels and boats, their tackle, apparel and furniture shall be held liable at all ports and places within this state or within the jurisdiction of the courts of this state or within the jurisdiction of the courts of the United States in said state for services rendered by stevedores, longshoremen or others engaged in the loading, unloading, stowing or dunnaging of cargo in or from any steamer, vessel or boat in any harbor or at any other place within said state, or within the jurisdiction of the courts thereof as above stated, and said steamers, vessels and boats shall further be liable as per their contracts for all services performed upon wharfs or landing places by stevedores, longshoremen or others: Provided, That such services must have been so performed in and about and to be connected with the loading, unloading, dunnaging or stowing of said cargo.

Priorities—Limitations of Actions for.

Demands for wages and all sums due under contracts or otherwise for the performance of all or any of the services mentioned in the last preceding section shall constitute liens upon all steamers, vessels and boats, their tackle, apparel and furniture, and shall have priority over all other demands save and excepting the demands mentioned in the first three subdivisions of section 5953 of Ballinger's Annotated Codes and Statutes of the state of Washington, to which said demands the lien hereby provided shall be subordinate: Provided, That such liens shall only continue in force for the period of three years from the date when such work was done or the last services performed by such stevedores, longshoremen or others.

How Enforced.

The liens hereby created may be enforced by a suit, in rem, and the law regulating like proceedings shall govern in all such suits. [Approved Mar. 16, 1901; L. 1901, p. 136.]

§ 5966. Liens for freight and surplus of sales money.—Where a carrier has sold goods for a sum in excess of its lien for freight and wharfage charges, the court may properly order the excess turned over to the county treasurer, under Ballinger's

Code, section 5966, subject to the order of the party entitled thereto: Koyukuk Min. Co. v. Van De Vanter, 30 Wash. 386, 70 Pac. 966.

§ 5981. Wages given priority in cases of insolvency.—Where a chattel mortgage

is given upon partnership furniture to secure the payment of rent under a lease of hotel property, with an agreement that all furniture subsequently added should be included within the mortgage; and by a dissolution of the partnership one of the partners continues the business alone with the consent of the lessors, but without any new agreement being entered into between them, and places his individual furniture in the hotel, the mortgagee is not entitled to a lien thereon as against claimants having a preference for labor performed within sixty days, accorded them by the terms of General Statutes, section 3122, in case of the insolvency of their employer: *Moore v. Terry*, 17 Wash. 185, 49 Pac. 234.

§ 5983. Claims for labor against property levied on by execution, attachment or other process—Notice of same to be served.—The statute (Gen. Stats., § 3124), giving servants, clerks, laborers, etc., the right to claim from the proceeds of execution or attachment sale of the property of their employers any amount, not exceeding one hundred dollars, due them for services rendered within sixty days next preceding the levy of the writ, and providing for the litigation of such claims, if disputed, is not open to the objection that it deprives one of his property without due process of law. Parties having claims for services, which, under General Statutes, section 3124, they are authorized to maintain against a judgment creditor who has levied upon the property of their employer, may properly join in the same action to enforce their claims: *Gleason v. Tacoma Hotel Co.*, 16 Wash. 412, 47 Pac. 894.

§ 5991. Of evidence—Witness, incompetency of.—Does not preclude the stockholders and directors of a bank from testifying concerning a note given by another stockholder to a deceased person for the purpose of protecting him against loss on a purchase of some of the bank assets, when such witnesses were not parties in any way to the note given and without financial interest in the result of the litigation, and the liability thereon had been wholly assumed by the maker alone: *Carr v. Jones*, 29 Wash. 79, 69 Pac. 640.

Under Ballinger's Code, section 5991, which excludes evidence of transactions had with a decedent, in an action of ejectment against the executors of the estate of a decedent from whom plaintiffs claimed to derive title sufficient to establish adverse possession, evidence on plaintiffs' part of having been put in possession of the land by decedent under an agreement for a deed which was subsequently executed, but by mistake failed to incorporate all the land of which they

had been put in possession under their purchase, is inadmissible: *Kline v. Stein*, 30 Wash. 190, 70 Pac. 235.

Under Code of Procedure, section 1646, testimony of the plaintiff tending to establish a resulting trust held by the deceased in his favor is inadmissible: *Spencer v. Terrel*, 17 Wash. 514, 50 Pac. 468.

A party to a transaction is not barred from testifying in regard thereto by the death of one of the adverse parties, when there is no attempt to prove any conversation or transaction with the deceased and the testimony is confined to transactions with one of the adverse parties still living: *Rauh v. Scholl*, 19 Wash. 30, 52 Pac. 332.

The refusal of the court to strike the testimony of a witness, on the ground that it related to transactions with a deceased person and that the witness was disqualified under Ballinger's Code, section 5991, as being a party in interest, was not error, where the testimony was admitted without objection, the witness subjected to a rigid cross-examination on the matters involved, but no examination made as to his alleged interest and no opportunity afforded him for explanation, and the motion to strike his testimony was not interposed until some days following its admission: *Newman v. Buzard*, 24 Wash. 225, 64 Pac. 139.

Has no application where the person offered as a witness was merely a party to the original contract with the deceased person, but is not a party to the suit, either directly or indirectly, and not bound in any way by the judgment in the particular proceedings in which the testimony of such witness is offered: *Sackman v. Thomas*, 24 Wash. 660, 64 Pac. 819.

A wife cannot testify to transactions or statements between her husband and a deceased person, although made or done in her presence, where community interests are involved in the result of the action: *Whitney v. Priest*, 26 Wash. 48, 66 Pac. 108.

Forbidding a party in interest to testify as to transactions had by him with, or statements made to him by, a deceased person, was not transgressed in an action for a division of profits arising from investments in real estate under a contract with a deceased person, where the plaintiff did not testify to conversations or transactions with such decedent, but confined his testimony to his inspection of certain lots when alone, stating their value at the time he saw them, and that deeds were afterward made for such property to the deceased: *Marvin v. Yates*, 26 Wash. 51, 66 Pac. 131.

The testimony of a sister of deceased establishing a partnership between them is

incompetent and inadmissible: *In re Alfstad's Estate*, 27 Wash. 176, 67 Pac. 593.

§ 5992. Incompetent when convicted of crime of perjury.—A person under conviction for perjury is not a competent witness, although the judgment was erroneous, as the judgment of conviction is conclusive against collateral attack: *State v. Harras*, 22 Wash. 57, 60 Pac. 58.

§ 5994. Privileged communications.—Where a client authorizes or employs an attorney to enter into an agreement for the compromise of a judgment held by the client, the authority thus given is not a confidential communication, and there is nothing to prevent the attorney testifying as to his authorization so to do: *Williams v. Blumenthal*, 27 Wash. 24, 67 Pac. 393.

The rule making communications between attorney and client privileged from disclosure on the witness-stand does not apply to testimony by the attorney disclosing by whom he was employed in the management of a case: *Stanley v. Stanley*, 27 Wash. 570, 68 Pac. 187.

A husband called as a witness against his wife in an action brought by her is incompetent to testify over her objection, under Ballinger's Code, section 5994, which provides that a husband shall not be examined for or against his wife without the consent of the wife: *Id.*

In an action by a wife against her husband's parents for damages for alienating his affections, declarations by the husband showing affection for the wife, made six months after the action was begun and long after the separation of husband and wife had occurred, are inadmissible in evidence: *Id.*

In proceedings supplementary to execution, brought against the wife of a judgment debtor to discover if she have property belonging to him in her possession, the wife may be examined without the consent of the husband, as he is not a party to the proceeding, and the case, consequently, does not fall within Code of Procedure, section 1649, which provides that a wife shall not be examined for or against her husband without his consent: *Frankenthal v. Solomonson*, 20 Wash. 460, 72 Am. St. Rep. 116, 55 Pac. 754.

Ballinger's Code, section 5994, which provides that neither a husband nor wife shall, during marriage or afterward, without the consent of the other, be examined as to any communication made by one to the other during marriage, is restricted to confidential communications, induced by the marital relation, and not to conversations relating to matters of business since it must be interpreted in conjunction with Ballinger's Code, sections 4504, 4505,

which provide that contracts may be made by a wife and liabilities incurred, and the same may be enforced by or against her, to the same extent and in the same manner as if she were unmarried, and actions may be instituted by one spouse against the other to establish whether the real estate conveyed to either is community or separate property: *Sackman v. Thomas*, 24 Wash. 661, 64 Pac. 819.

§ 6009. Interrogatories to adversary—Striking out.—Where interrogatories are directed to the discovery of facts material to the defense, a motion to strike them is properly denied, under the authority of Code of Procedure, section 1661. Error, if any, in striking interrogatories propounded by plaintiff, is not prejudicial, where all of them are covered by statements in defendant's answer verified by him personally, and defendant was also a witness at the trial: *Du Clos v. Batcheller*, 17 Wash. 390, 49 Pac. 483.

§ 6010. Interrogatories—May be read in evidence though witness present.—Under Code of Procedure, sections 1660-1665, authorizing the admission in evidence of written interrogatories and the answers thereto, without any restriction being imposed, they are admissible although the party interrogated may be present as a witness at the trial: *Island County v. Babcock*, 20 Wash. 238, 55 Pac. 114.

Under the provisions of Ballinger's Code, sections 6008-6013, authorizing the examination by written interrogatories of the adverse party, after the filing of the moving party's pleading in the case, only such portion of the interrogatories and answers as the party procuring them chooses may be given in evidence, where they are complete in themselves and have no connection with the other answers: *Allend v. Spokane Falls etc. Ry. Co.*, 21 Wash. 326, 58 Pac. 244.

Striking for evasiveness.—The action of the court in striking answers to written interrogatories is not erroneous, when the interrogatories were directed to facts within the knowledge of the party and the answers returned by him are plainly evasive and made with intent to conceal instead of disclosing the facts within his knowledge: *Lowry v. Moore*, 16 Wash. 476, 58 Am. St. Rep. 49, 48 Pac. 238.

§ 6012. Not conclusive on adversary.—A party who has propounded interrogatories to his adversary may put the answers in evidence without being bound by their statements against his interest, but, under Ballinger's Code, section 6012, he is entitled to contradict such answers by other evidence: *Sawdex v. S. F. & N. Ry. Co.*, 30 Wash. 350, 70 Pac. 972.

§ 6031. Evidence—Depositions—Enforcement of Attendance of Witnesses to Give.

That the superior court shall have power to compel the attendance of witnesses, within this state, before notaries public, justices of the peace or any other person authorized by the laws of this state to take depositions in causes pending in any court of the state, or in any court of any other state, or in any court of the United States, or in any court of a foreign country.

Application for Order on Witness to Attend.

The officer before whom the deposition is to be taken in case of the refusal of any witness to attend or testify shall report to the superior court in and for the county in which the witness resides, or is found, by petition, that due notice has been given of the time and place of taking the depositions and that the witness have been summoned in the same manner that witnesses are now summoned to appear and testify in the superior court of this state; and the fees and mileage of the witness has been paid, or tendered to the witness, for his attendance and testimony, and that the witness has failed and refused to attend or testify before such officer, in the cause mentioned in the notice and the subpoena; and ask an order of the court compelling the witness to attend and testify before such officer.

Condition upon Which Order Issues.

The court upon the petition of the officers, and the payment of the regular docket fee of four dollars (\$4) shall enter an order directing the witness to appear before the officer making the report, at a time and place to be fixed by the court in such order, and then and there give his testimony in such cause. A copy of which order shall be served upon the witness in the same manner that summons and complaints are now served; and on failure or refusal of the witness to obey such order such witness shall be dealt with as for contempt. [Approved Feb. 28, 1901; L. 1901, p. 23.]

§ 6040. Records of courts of sister states.—Where an action is brought in this state upon a judgment for alimony rendered in another state, the courts of this state will take judicial notice of the local laws of such state, and that they confer jurisdiction upon the court from which the record comes to render the judgment sued upon: *Trowbridge v. Spinning*, 23 Wash. 48, 83 Am. St. Rep. 806, 62 Pac. 125.

A decree of divorce rendered by a court of another state may be collaterally questioned and declared void in an action in this state in which effect is sought to be given to it, when it appears that, prior to the institution of the suit for divorce, the court rendering the decree had lost jurisdiction of the subject matter, through the abandonment by the husband and wife of their residence in that state; that the defendant had never been properly served with summons in accordance with the laws of that state; that she was ignorant of the suit; that an appearance entered for her and answer in her behalf by an at-

torney were without her knowledge or authorization; that the decree was rendered a month prior to the time she was required by the summons to appear and answer; that, immediately upon learning of the decree she instituted an action against her husband in this state to have the divorce declared fraudulent and herself awarded a half interest in the property held by her husband; and that, within two days thereafter, the parties were remarried on a compromise whereby it was agreed the latter suit should be dismissed, the parties should remarry and should share the property in dispute as community property: *Dormitzer v. German Sav. etc. Soc.*, 23 Wash. 132, 62 Pac. 862.

When the records and judicial proceedings of the courts of another state are sought to be given effect in this state, the courts of this state will take judicial notice of the laws conferring jurisdiction on the courts from which such records come, in pursuance of the provision of the constitution of the United States which requires that "full faith and credit shall

be given in each state to the public acts, records and judicial proceedings of every other state": Id.

The provision of the United States constitution requiring full faith and credit to be given in each state to the judicial proceedings of every other state does not prevent a collateral attack upon the jurisdiction of the court of a sister state to render the judgment offered in evidence in an action brought in another state: Id.

§ 6057. Oaths and affirmation — Form adopted to suit religious belief.—Where an oath has been administered to a Chinese witness according to the custom and religion of his country, the subsequent administration to him of an oath in the form prescribed by our statute is not prejudicial error: *State v. Gin Pon*, 16 Wash. 425, 47 Pac. 961.

§ 6075. Probate law and procedure—Powers of court.—The jurisdiction of the superior court in matters of probate being confined, under Ballinger's Code, section 6075, to matters incidental to the settlement of the estates of decedents and of estates under control of guardians, its power cannot be invoked to determine controversies between third parties which in no way affect the interests of the estate itself, and hence the court sitting in probate has no jurisdiction to determine the right of an attorney to fees for services rendered in behalf of a legatee in contests over the will through which she claims: *Winston v. Crowe*, 28 Wash. 65, 68 Pac. 174.

§ 6087. Of venue—Probate of wills—Jurisdiction—Letters testamentary and of administration.—It is not necessary that a will executed in a foreign country by a person domiciled there should be first proved in such foreign country according to the laws prevailing there in order to entitle it to probate in this state: *In re Clayson*, 26 Wash. 253, 66 Pac. 410.

Under Ballinger's Code, section 6087, which provides that wills may be probated and letters granted in the county of which deceased was a resident or had his place of abode at the time of his death, or in the county in which he may have died, leaving estate therein, and not being a resident of the state, or in the county in which any part of his estate may be, he having died out of the state, and not being a resident thereof, the question of the testator's place of residence is not a jurisdictional fact, and need not be shown in a petition for probate: *Higgins v. Nethery*, 30 Wash. 239, 70 Pac. 489.

§ 6110. Contest of wills — Attorneys' fees.—In an action by a child to set aside a will, where there is probable cause for contesting its validity, it is not error for the court, upon confirming the will, to make an order allowing expenses and attorneys' fees to the contestant: *In re Gorkow's Estate*, 20 Wash. 563, 56 Pac. 385.

§ 6141. Administration, who entitled to. Ballinger's Code, section 6141, awarding the right to administer upon a decedent's estate in certain contingencies to one or more of the principal creditors, contemplates only such creditors as were in existence prior to the decedent's death and would not include a creditor for the funeral expenses, since section 6333 of Ballinger's Code specially protects the holder of such a claim by making it the first one payable out of the funds of the estate: *In re Sullivan's Estate*, 25 Wash. 430, 65 Pac. 793.

In a contest among creditors for the administration of an estate valued at \$250,000, where the claims of all the creditors except one were for sums less than \$100, and that one's claim was for \$60,000, there could be but one principal creditor: Id.

§ 6172. Special administrator—Insufficient showing for.—The insufficiency of the showing made for the appointment of a special administrator, under Code of Procedure, section 931, is nothing more than an irregularity, which would not affect the question of the jurisdiction of the court: *State v. Ayer*, 17 Wash. 127, 49 Pac. 226.

§ 6189. Administration—Partnership estates—Action.—An action at law cannot be maintained against the survivors of a partnership to recover a debt due from the firm, pending the settlement of the partnership estate, under the statutes of this state giving the right of administration of partnership estates to the survivors: *Brigham Hopkins Co. v. Gross*, 20 Wash. 218, 54 Pac. 1129.

§ 6190. Partnership estate—Surviving partner entitled to letters.—A surviving partner is empowered to treat the partnership realty as personalty and dispose of it in the same way for the purpose of paying debts and adjusting partnership rights, without the necessity of making the showing required of an executor or administrator in order to authorize the latter to sell real estate: *State v. Neal*, 29 Wash. 391, 69 Pac. 1103.

§ 6196. Administration, without intervention of court—Vested right.—The right of a testator to have his estate settled without the intervention of the probate court, under Code of 1881, section 1443, where his will provides that his estate shall be settled as provided therein, without letters testamentary or of administration being required, is a vested right, which cannot be taken from him by a subsequent enactment: *State ex rel. Phinney v. Superior Court*, 21 Wash. 186, 57 Pac. 337.

Jurisdiction of superior court.—The superior court has no jurisdiction to inquire into the mismanagement of an estate by its executors, when application therefor is made at the suit of a creditor

of an heir, where the powers of the executors are derived from the terms of a non-intervention will, made under the provisions of Code of Procedure, section 955: *State ex rel. Cox v. Superior Court*, 21 Wash. 575, 59 Pac. 483.

Where by the terms of a will the executors are constituted trustees for the purpose of managing the estate without the intervention of the probate court, marshal its assets and devote the proceeds in the interest of a specified beneficiary, the superior court has jurisdiction on its equity side, and not in probate, of an action instituted by the cestui que trust against the trustees for an accounting and for their removal: *Seattle v. McDonald*, 26 Wash. 98, 66 Pac. 145.

In an action in the federal court by the receiver of an insolvent national bank against the executrix of an estate to recover judgment upon her testator's liability as a shareholder, judgment against the executrix was decisive of the issues as to the liability of the estate and the jurisdiction of the court, and was an enforceable judgment in probate proceedings in the state court, where it appeared that the executrix was appointed under the terms of a nonintervention will, by virtue of which she took over all the property of the estate, that she still had funds thereof in her possession, without there being any other indebtedness against the estate, and that her testator was the owner of shares of stock in such insolvent bank upon which a valid assessment had been levied by the comptroller of the currency: *McDonald v. Frater*, 29 Wash. 422, 69 Pac. 1111.

Where an executrix derived her powers from what is known as a "nonintervention will," and accepted her trust and managed it in accordance with the provisions of the will and not under the statute regulating the administration of estates, the fact that she sold her testator's partnership interest under leave of court, and that she filed a report showing there were no debts against the estate, upon which the court granted her a discharge from her trust, would not exempt her from after-accruing liabilities of the estate, inasmuch as the act of the probate court in attempting to control the administration of an estate held under such a will was beyond its jurisdiction: *Id.*

Notice to creditors to file claims within one year is not necessary in the case of estates administered under the provisions of a nonintervention will: *Id.*

The superior court, sitting in probate, had no jurisdiction to make an order of sale of the real estate of a testator, where it was held by the executrix under the terms of a nonintervention will, had been settled without the intervention of the court, the debts of the estate had all been

paid, the property remaining had vested in the devisees named in the will, and the trust reposed in the executrix had been concluded, prior to her application for such order of sale: *Logging Co v. Clowe*, 29 Wash. 721, 70 Pac. 138.

§ 6205. See note to section 4563; *Eastham v. Landon et al.*

§ 6208. **Penalty for failure to return inventory.**—Ballinger's Code, section 6208, authorizing the court to revoke letters testamentary, where the executor fails to file his inventory of the estate within the period prescribed by statute, or within such further time, not exceeding three months, as the court shall allow, is directory instead of mandatory, and the authority of the court to remove in case of a failure of the executor to comply rests in its sound legal discretion: *Clancy v. McElroy*, 30 Wash. 567.

§ 6209. **Additional inventory, enforcement of.**—An administratrix is not estopped from denying that the proceeds of a judgment recovered by her in her representative capacity were assets of the estate, where such judgment was for the recovery of trust funds in an action instituted by her intestate in his own name, but in fact as a trustee, and in which she had been substituted as a party on his death: *In re Belt's Estate*, 29 Wash. 535, 92 Am. St. Rep. 916, 70 Pac. 74.

Although an administratrix has in her representative capacity enforced the collection of moneys belonging to a trust fund for which her intestate was trustee, she is not bound to account therefor to the personal creditors of the decedent, but is responsible therefor only to the cestui que trust: *Id.*

Although the superior court sitting in probate has no jurisdiction to try the title to property, yet the court has power to determine the fact whether or not property in dispute belongs to an estate as an asset thereof for the purpose of inclusion in the inventory: *Id.*

§ 6219. **Homestead and widow's allowance.**—A homestead set aside by the court, under Ballinger's Code, sections 6219, 6222, to the widow and minor child of a decedent does not vest the title to such homestead in them, when the land exempted as a homestead was the separate property of the decedent; but such sections must be construed in connection with section 5246, by which it is provided that if a homestead was selected from the community property, the land rested in the survivor upon the death of either spouse, and "in other cases, upon the death of the person whose property was selected as a homestead, it shall go to his heirs or devisees, subject to the power of the superior court to assign the same for a limited period to the family of the de-

cedent": Austin v. Clifford, 24 Wash. 172, 64 Pac. 155.

The general homestead law, which has superseded the provisions contained in such sections permitting the selection of a homestead to be made by minor children where neither the husband in his lifetime, nor the widow after his death, made any selection of a homestead in community realty, a minor child cannot claim one after the death of his parents, as against the other heirs of the community: Stewin v. Thrift, 30 Wash. 36, 70 Pac. 116.

A minor child is entitled to an allowance out of, and not to the whole of, the personal property of his deceased parents, for his support during his minority, and then only upon a showing of necessity therefor: Id.

§ 6220. Exempt property to be set apart for use of widow and minor children. Under Ballinger's Code, section 6220, a surviving husband is as much entitled to an allowance for the maintenance of minor children as the widow would be: In re Murphy's Estate, 30 Wash. 9, 70 Pac. 109.

Physician's charges and funeral expenses incurred for the benefit of minor children are properly allowable as a part of the family allowance: Id.

Upon the hearing of objections made to an ex parte allowance for the support of minor children, it is within the power of the court to make a nunc pro tunc order covering the same items included in the original order, where there has been due notice given of such subsequent hearing, and the items are proper ones for allowance under the law: Id.

§ 6226. Notice to creditors—When not required.—Where a testator has disposed of his estate by vesting his executors with full authority to administer same without the intervention of the probate court, notice to creditors is not necessary; and hence failure to present a claim within one year after publication of notice to creditors will not operate to bar action thereon: Moore v. Kirkman, 19 Wash. 605, 54 Pac. 24.

§ 6228. Presentation of claims—Bar of claim by failure to present.—Under the statutes of this state governing claims against decedents' estates, action on any claim is barred, if it has not been presented to the executor or administrator within one year after published notice of the appointment of such personal representative, although such claim at the time within which it should have been presented may not have been due, or may in fact have been wholly contingent: Barto v. Stewart, 21 Wash. 605, 59 Pac. 480.

The bar of the statute upon claims against a decedent's estate not presented within one year after notice to creditors

is inapplicable to claims not in existence until after the expiration of the year specified in the notice to creditors: McDonald v. Frater, 29 Wash. 423, 69 Pac. 1111.

§ 6229. Claims must be verified.—Presentation to the executor or administrator of the original instrument in writing as a claim against the decedent's estate is unnecessary unless required by such personal representative, but the presentation of an affidavit setting forth the claim and a copy of the instrument is a sufficient compliance with the provisions of Code of Procedure, section 980, in case the executor or administrator does not require satisfactory vouchers to be produced in support of the claim: McFarland v. Fairlamb, 18 Wash. 601, 52 Pac. 239.

In presenting to the administrator of an estate a claim based upon a promissory note, a copy of the note verified by affidavit is sufficient under Code of Procedure, section 980, without producing the original, unless the production of the latter for examination may have been demanded by the administrator: First National Bank v. Root, 19 Wash. 111, 52 Pac. 521.

§ 6235. Presentation of demands before suit.—Presentation of a claim against a decedent's estate to the executor or administrator thereof is necessary before action on the claim, under Code of Procedure, section 986, although the notice to creditors to present claims required of the executor by Code of Procedure, section 977 (Bal. Code, § 6226), may never have been published: McFarland v. Fairlamb, 18 Wash. 601, 52 Pac. 239.

§ 6257. Sale and mortgage of lands.—An order of the court authorizing an administrator to mortgage real estate is void, when based upon a petition by the administrator showing affirmatively that the personal property of the estate has not been exhausted, but merely that "petitioner has sold all the personal property of said estate that in his judgment is advisable to sell at the present time": Wallace v. Grant, 27 Wash. 130, 67 Pac. 578.

§ 6314. Commissions to administrator—Allowed on value of land distributed to heirs, etc.—Under Code of Procedure, section 956, authorizing an administrator to take possession of and care for the real and personal estate of a decedent, and Code of Procedure, section 1056, providing for a commission to the administrator on the whole estate accounted for by him, according to a percentage of the money value, an administrator, upon final accounting, is entitled to a commission upon the unsold realty of the estate according to its actual value at the time of accounting, and not according to its appraised value as inventoried: Horton v. Barto, 17 Wash. 675, 50 Pac. 587.

An administratrix is entitled to the statutory commission for administering upon the realty belonging to a decedent's estate according to the appraised value thereof, in the absence of any showing that that was not its actual value: *Wilbur v. Wilbur*, 17 Wash. 683, 50 Pac. 589.

A decedent's estate cannot be charged with the expense of attorney fees incurred by the administratrix in securing her appointment as such. A decedent's estate cannot be charged with an attorney's fee contracted by the administratrix for litigating her right to inherit, in an attempt by her to establish a claim as sole heir: *Id.*

Witnesses may be examined to fix value of estate for the purpose of arriving at commission of administrator where will provides for "just compensation" to executors and trustees thereunder, unless renounced, will preclude allowance of commission under statute: *In re Smith's Estate*, 18 Wash. 129, 51 Pac. 348.

The refusal of the court to allow an administrator his full claim for services in the management of two estates jointly is warranted, where it appears that he was the administrator of the estates of both the ancestor and the sole heir, that both estates comprised the same property, that the same services were rendered and the same accounting had in both of them, and that upon the final settlement of the ancestor's estate he had been fully compensated for all his services rendered up to that date: *In re Mason's Estate*, 26 Wash. 259, 66 Pac. 435.

The fact that the court in allowing an administrator the statutory compensation for services fails to include the real property of the estate as a basis from which to estimate commissions upon the amount of the estate accounted for is not error, in the absence of any showing as to the value of the land: *Id.*

§ 6333. Order of payment of debts.—Where the expenses of an adult child's last sickness and funeral have been paid by a father from his personal funds, he is entitled to reimbursement from such child's distributive share of its mother's estate, prior to any disposition thereof other than application toward the debts of the estate: *In re Murphy's Estate*, 30 Wash. 9, 70 Pac. 109.

§ 6355. Distribution of estate.—A court has no authority to make a decree of distribution of his real estate subject to a lien in favor of the administrator for his commissions: *Horton v. Barto*, 17 Wash. 675, 50 Pac. 587.

A decree upon distribution of an estate, that unless the parties interested, within thirty days from the entry of the order, paid the costs of administration, sufficient of the real estate should be sold to satisfy

the same, is not open to the objection of being a decree distributing the estate subject to a lien: *Wilbur v. Wilbur*, 17 Wash. 683, 50 Pac. 589.

§ 6357. Partition—Notice must be given all parties in interest.—Under Ballinger's Code, sections 6357, 6361, which provides that partition and distribution of real estate in the probate court is made on the application of the executor or administrator, or any person interested in the estate, and only upon notice as required upon an application for the sale of land by an executor or administrator, and that partition may be had, although some of the original heirs or devisees may have conveyed their shares to other persons, who shall be entitled to an assignment of such portion in the same manner as the heirs or devisees would have been, an order of distribution made by the probate court under the provisions of the will, without notice to the grantee of the undivided moiety of one of the devisees was void: *McGowan v. Smith*, 22 Wash. 625, 61 Pac. 713.

Decree in—Effect of.—After a decree of distribution of a decedent's estate has been rendered in a probate proceeding, and the estate has been distributed in accordance therewith, the court has no jurisdiction to subject the property involved therein to a judgment subsequently rendered against the administrator, when the decree of distribution has not been reversed, modified or annulled. The effect of a decree of distribution is to vest the absolute right and title to the property in the distributees, and a subsequent order of the court directing a different disposition to be made of a portion of the property would be without authority and void. Even though a decree of distribution of a decedent's real estate may have been conditional and the condition may not have been performed, such real estate cannot be subjected to the lien of a judgment when the petition therefor fails to state facts showing that there is not sufficient personal property in the hands of the executor to satisfy the claim, and that a sale of the real estate is necessary for the purpose of paying debts of the estate. A claimant against a decedent's estate has no right to proceed against the heirs and distributees, until he has exhausted his remedies against the personal representatives; and, in such event, he must resort to an independent action against the heirs and distributees: *Prefontaine v. McMicken*, 16 Wash. 16, 47 Pac. 231.

§§ 6402, 6405. Guardianship of infants—Guardians—Powers of.—Under Ballinger's Code, section 6402, which authorizes guardians to prosecute and defend for their wards in all cases and under Ballinger's Code, section 6405, which makes

it the duty of a guardian to manage the estate for the best interests of the ward, pay all just debts due from the ward out of his estate, collect all debts due the ward, and in case of doubtful debts compound the same, a guardian is authorized

to enter into a contract agreeing to pay attorneys one-half of all the estate they may recover for the ward in an action brought to establish his right thereto: *Schulteis v. Nash*, 27 Wash. 251, 67 Pac. 707.

§ 6424a. Guardianship of Idiots and Insane Persons—Guardians—Appointment—Notice of Application for.

When it is represented to the superior court upon verified petition of any relative or friend that any person, resident of the county, is a minor or is insane or is mentally incompetent to manage his property, and that such person has property needing care and attention, coupled with an application for appointment of a guardian for such person, such court must cause a notice to be given to such minor, insane or mentally incompetent person, of the time and place of hearing the application for the appointment of a guardian to manage the estate of such person, not less than ten days before the time so appointed.

Service of Notice.

If such minor, insane or mentally incompetent person is in the care, custody or control of any person, officer, or body, then notice must be served also on such person, officer or body in charge of such person; and such person for whom a guardian is sought, if able to attend, must be produced on the hearing.

Personal service must be made on such minor, insane or mentally incompetent person, if possible, and the laws of the state of Washington relating to the manner of service of summons shall apply to the service of the notice provided herein, as nearly as said statutes can apply.

Duty of Custodian of Person—Duty of Prosecuting Attorney.

It shall be the duty of any person, officer or body in the custody, charge or control of any minor under the age of fourteen years, insane person or mentally incompetent person, when so served with notice of such application, to forthwith report the service of said notice to the court of the county in which said application is to be heard. It shall be the duty of the prosecuting attorney of said county in all cases to appear for such minor, insane or mentally incompetent person at the hearing of said application, and in case of the disability of the prosecuting attorney the court shall appoint a suitable person to represent the said minor, insane or mentally incompetent person at said hearing: Provided, (Nothing herein shall prevent said minor, insane, or mentally incompetent person, or the person, officer, or body having such person in custody, charge and control, from appearing by attorney of his own, and in such event it is not the duty of the prosecuting attorney to appear for such person.)

Of Nonresident Person. Having Property in State.

When a minor under the age of fourteen years, insane person or mentally incompetent person having property in the state of Washington for whom a guardian is sought to be appointed resides out of the state of Washington, then the service of the notice aforesaid shall be had against said minor, insane person or mentally incompetent person by publishing said notice for the period of six weeks in some suitable newspaper of general circulation published in the county

in which the application is to be heard and service shall be deemed to be had at the expiration of ten days from the completion [completion] of such publication of notice, whereupon such proceedings shall take place as hereinbefore provided herein. [Approved Mar. 16, 1903; L. 1903, p. 242.]

§ 6432. Guardian to prosecute and defend for ward.—Under Ballinger's Code, section 6432, which imposes the duty upon a guardian of defending all actions brought against his ward, a guardian is

without authority to enter into a stipulation agreeing to abide the result of an action under a defense imposed by another party: *Mattson v. Mattson*, 29 Wash. 417, 69 Pac. 1087.

§ 6444. Persons Under Guardianship—Claims for and Against—Compromise by Guardian.

Every minor, imbecile or insane person, having a cause of action against him, or in his favor, shall be bound by any compromise or settlement thereof to the same extent as a person not under legal disability would be bound; providing such compromise is made by the guardian of such minor, imbecile or insane person by and with the advice of the court, by whom such guardian was appointed. Before making a compromise, the guardian shall file in the court wherein he is appointed, and to which he is accountable, a petition briefly stating the nature of the claim, together with the reasons for the making of such compromise. In case the ward is a minor more than fourteen years of age, a copy of the petition with a notice of the time of hearing, shall be served upon the ward. The guardian shall call to the attention of the court all facts pertaining to said matter, and if the court, after such hearing, directs a compromise to be made, the guardian is hereby authorized to make and accept acquittances which shall be forever binding upon his ward. [Approved Mar. 14, 1903; L. 1903, p. 153.]

§ 6474. Sales of estates—Sales of lands—Requisites of—Not void for irregularities.—Ballinger's Code, section 6474, which is intended as a curative act for all irregularities in guardianship sales, when the premises are held by one who purchased them in good faith, does not apply to cases where the guardianship proceedings are assailed on the ground of fraud from their very inception, and where the purchaser is shown to have had knowledge of facts which should have put him on inquiry: *Dormitzer v. German Sav. etc. Soc.*, 23 Wash. 132, 62 Pac. 862.

A transfer of the half interest of minor children in certain realty to their father, procured at his instance through a guardian controlled by himself, and made for the purpose of vesting the whole title unencumbered in the father, so that he might procure a mortgage loan thereon, the law not permitting the mortgage of the property of minors by their guardian, was absolutely void, although the father, the guardian, the mortgagee and the probate court may have acted with the best of motives, and with no intent to defraud such minor children: *Id.*

§ 6484. Care of Orphan and Neglected Minors.

Powers of Benevolent Societies in.

Any benevolent or charitable society incorporated under the laws of this state for the purpose of receiving, caring for or placing out for adoption, or improving the condition of orphan, homeless, neglected or abused minor children of this state shall have authority to receive, control, and dispose of children under eighteen (18) years of age under the following provisions:

(a) When the father and mother or the person or persons legally entitled to act as guardian of the person of any minor child shall, in writing, surrender

such child to the charge and custody of said society, such child shall thereafter be in the legal custody of such society for the purposes herein provided.

(b) In case of death or legal incapacity of a father or his abandonment or neglect to provide for his family, the mother shall have authority to make such surrender, and in case of the death or legal incapacity of a mother, or her abandonment of such child, then the father shall have authority to make such surrender.

(c) In all cases where the person or persons legally authorized to make such surrender are not known, any judge of superior court may cause a notice of hearing to be published in any newspaper of general circulation printed and published in the county, and if he deems it best for such orphan, homeless, neglected or abused child, he may surrender it to any benevolent or charitable society incorporated under the laws of Washington and having for its object the care of such children.

(d) When any child shall have been surrendered in accordance with any of the preceding clauses and such child shall have been accepted by such society, then, (but not otherwise), the rights of its natural parents or of the guardian of its person (if any) shall cease and such corporation shall become entitled to the custody of such child, and shall have authority to care for and educate such child or place it either temporarily or permanently in a suitable private home in such manner as shall best secure its welfare. Such corporation shall have authority when any such child has been surrendered to it in accordance with any of the preceding provisions, and it is still in its control, to consent to its adoption under the laws of Washington. The custody or control of any such child by any such corporation or by any other corporation, institution, society or person may be inquired into, and, in the discretion of the court, terminated at any time by the superior court of the county where the child may be, upon the complaint of any person, and a showing that such custody is not in the interest of the child.

Complaint—By Whom Made—Proceedings.

Upon complaint of any person in writing other than an officer or agent of such society or corporation to any judge of the superior court giving the names and residences of the parents, guardian (if any) or next of kin of such child, so far as known, and alleging that the father of such minor child is dead, or has abandoned his family or is an habitual drunkard, or is a man of notoriously bad character, or is imprisoned for crime, or has grossly abused or neglected such child, and that the mother of such child is an habitual drunkard, or imprisoned for crime, or an inmate of a house of ill-fame, or a woman of notoriously bad character or is dead, or has abandoned her family, or has grossly abused or neglected such child, and alleging that the welfare of such child requires that legal steps be taken to provide for its care and custody, a warrant shall issue directing the proper officer to take such child into custody and care for or dispose of it as such judge shall direct, until a hearing can be had, such proceedings shall have precedence of other causes, of which hearing not less than five days' notice shall be given to such parents, guardian or next of kin and such judge shall hear the allegations of the complaint and all testimony offered for

or against the same and determine whether in his judgment there is cause for a change in the care and custody of such child. If the judge shall decide to change the care and custody of such child, he may commit the child to the care and custody of any such benevolent society contemplated in this act which is willing to receive it, and such commitment shall carry with it the same powers and authority as above provided in case of voluntary surrender, or he may enter such findings and transmit the papers and a transcript of his proceedings to the county commissioners of the county in which the case arises and surrender such child to the care and custody of such commissioners and it may be disposed of without further notice to the parents, guardian or next of kin.

Powers of County Commissioners Over.

When any minor is a county charge, the board of county commissioners, if they think the welfare of the child demands it, may surrender such child to the care and custody of any benevolent society or corporation without the consent of its parents unless within twenty days after the notice of the intention of such commissioners so to do, given in writing to parents, guardian or next of kin of such child so far as known, to said commissioners, such parents, guardian or next of kin shall provide for such child and relieve the county thereof and when any child has been so surrendered by the county commissioners, it may be disposed of as herein provided for the disposition of other children.

Duty of Police.

When any officer or agent of any such society shall request a police officer, or other peace officer, to investigate or assist in the investigation of any alleged case of any such neglected or abused child, such officer shall immediately make or assist in such investigation and if he deem it proper shall forthwith take such child into custody without warrant, taking such child and reporting such case at once to the judge of the superior court for such proceedings as may be proper under the provisions of this act.

When Convicted of Crime.

When any minor under eighteen years of age shall be convicted on any charge the punishment for which may be imprisonment or confinement in the reform school, the judge of the superior court, if he finds that the good of such minor demands it, and such minor is an orphan, or a homeless, neglected or abused minor within the terms of this act, or is a county charge, or the parents or guardian of such minor consent thereto, may suspend sentence and surrender the custody of such minor to any society, as is contemplated in this act, when such society is willing to receive such minor, until such minor shall attain the age of majority, or for a term of years to be fixed in the order of surrender, and such society may find a home for such minor and surrender his custody to the person providing such home for the term fixed in said order of surrender, which surrender by the society shall be approved by an order of said court: Provided, That nothing in this section shall be held to affect the natural rights of said minor or of his parents or guardian, except in the matter of his custody; and provided further, That if said minor shall fail to conform

to the order of court fixing his custody, he may be apprehended and brought before the court, and the court may sentence said minor as provided by law, or resurrender him as the court may deem best for the interests of said minor.

Nothing in this act shall entitle any such society to act as guardian or to have control of the estate of any minor child.

Habeas Corpus Respecting—Evidence.

Upon the hearing of any writ of habeas corpus for the custody of any such child, if it appears that such child has been surrendered to any such corporation under the provisions of this act such surrender shall be taken as prima facie evidence that such child was legally and properly surrendered to such corporation and that such corporation is entitled to the custody and control of such child under the provisions of this act.

Expense—How Paid.

The board of county commissioners shall pay the expenses of bringing the child before the court and caring for it pending a hearing under this act; when a child is surrendered to a benevolent society under the provisions of this act by the superior court, the county shall pay such society a reasonable compensation for the temporary care of such child until it is placed in a family but not to exceed fifty (\$50) [dollars] in each case. No clerk, sheriff, police officer, member of the board of county commissioners or agent of any such society shall charge or be allowed any costs whatever in these proceedings, except where a complaint shall be adjudged to be without sufficient cause and malicious, in which event all costs shall be taxed against the complainant: Provided, That the provisions of this section shall not apply to cases under section 5 of this act.

An act entitled, "An act for the protection of orphan, homeless, neglected or abused children, and conferring powers upon judges of the superior court, the county commissioners and charitable societies to receive, control and dispose of the same, and declaring an emergency," approved Feb. 14, 1899, be and the same is hereby repealed. [Approved Mar. 7, 1903; L. 1903, p. 58.]

§ 6500. Of Appeals to Supreme Court—When Allowed.

Any party aggrieved may appeal to the supreme court in the mode prescribed in this title from any or every of the following determinations, and no others, made by the superior court, or a judge thereof, in any action or proceeding.

(1) From the final judgment entered in any action or proceeding, and an appeal from any such final judgment shall also bring up for review any order made in the same action or proceeding either before or after the judgment, in case the record sent up on the appeal, or any supplementary record sent up before the hearing thereof, shall show such order sufficiently for the purposes of a review thereof.

(2) From any order refusing to vacate an order of arrest in a civil action.

(3) From an order granting or denying a motion for a temporary injunction, heard upon notice to the adverse party, and from any order vacating or

refusing to vacate a temporary injunction: Provided, That no appeal shall be allowed from any order denying a motion for a temporary injunction, or vacating a temporary injunction unless the judge of the superior court shall have found upon the hearing, that the party against whom the injunction was sought was insolvent.

(4) From any order discharging or refusing to discharge an attachment.

(5) From any order appointing or removing, or refusing to appoint or remove, a receiver.

(6) From any order affecting a substantial right in a civil action or proceeding, which either, (1) in effect determines the action or proceeding and prevents a final judgment therein; or (2) discontinues the action; or (3) grants a new trial; or (4) sets aside or refuses to affirm an award of arbitrators, or refers the cause back to them.

(7) From any final order made after judgment, which affects a substantial right; and an appeal from any such order shall also bring up for review any previous order in the same action or proceeding which involves the merits and necessarily affects the order appealed from, in case the record sent up on the appeal, or any supplementary record sent up before the hearing thereof, shall show such previous order sufficiently for the purposes of a review thereof. But an appeal shall not be allowed to the state in any criminal action, except when the error complained of is in setting aside the indictment or information, or in arresting the judgment on the ground that the facts stated in the indictment or information do not constitute a crime, or is some other material error in law not affecting the acquittal of a prisoner on the merits. [Amendment, approved Feb. 28, 1901; L. 1901, p. 28.]

§ 6500. What is a final judgment.—A judgment by default is a final judgment, and appealable, since, under Code of Procedure, section 193 (Ballinger's Code, § 4911), objection can be made to the complaint on appeal, if it fails to state facts sufficient to constitute a cause of action: *Rhode Island Mortgage etc. Co. v. Spokane*, 19 Wash. 616, 53 Pac. 1104.

Appealable interest.—A receiver of an insolvent bank, who appears of record also as attorney for the bank itself, may prosecute an appeal for the bank, when no question as to his authority to appear as such attorney has been raised in the lower court: *Hallam v. Tillinghast*, 19 Wash. 20, 52 Pac. 329.

Where one has sufficient interest to be made a party to an action, he cannot be denied an appealable interest in the cause, should the judgment be against him: *State v. Cranney*, 30 Wash. 595, 71 Pac. 50.

Second appeal where first is invalid.—An appellant is not deprived of his right of appeal by abandoning a prior attempted appeal which was invalid by reason of having been prematurely taken: *Griffith v. Maxwell*, 20 Wash. 403, 55 Pac. 571.

Final order after judgment—What is.—The provisions of Ballinger's Code, sec-

tion 6500, subdivision 7, which allow an appeal from any final order made after judgment, which affects a substantial right, which appeal shall bring up for review any previous order in the same action which involves the merits and necessarily affects the order appealed from, does not authorize the review of an order vacating a judgment, when the appeal is from an order quashing a writ of execution which had been issued on the vacated judgment: *Sturgis v. Dart*, 23 Wash. 244, 62 Pac. 858.

The action of the lower court in overruling a motion to vacate a final judgment, after its affirmance on appeal to the supreme court, is not an appealable order, under Ballinger's Code, section 6500, subdivision 7, which provides that any party aggrieved may appeal from any final order made after judgment which affects a substantial right, since such second appeal would not raise any questions not passed upon, or which might have been passed upon, in the original appeal: *State v. Boyce*, 25 Wash. 423, 65 Pac. 763.

Where a judgment of conviction has been affirmed on appeal and the lower court directed to carry out the judgment inflicting the death penalty, an order of

the lower court overruling exceptions taken to its order for the issuance of the death warrant is not appealable: *Id.*

An order setting aside an execution levy and sale is an order made after judgment affecting a substantial right, and is therefore appealable under Ballinger's Code, section 6500, subdivision 7: *Otis Bros. v. Nash*, 26 Wash. 39, 66 Pac. 111.

Upon an appeal from an order denying a petition to set aside and vacate a judgment, the denial by the court in the same cause of an earlier petition, which asked for the same relief as the subsequent one, is not reviewable, under Ballinger's Code, section 6500, subdivision 7: *Wilson v. Seattle Dry Dock*, 26 Wash. 297, 66 Pac. 384.

Appeal by state in criminal causes.—Under Ballinger's Code, section 6500, subdivision 7, an order granting a new trial to the defendant would not be appealable on the part of the state: *State v. Johnson*, 24 Wash. 75, 63 Pac. 1124.

Under Ballinger's Code, section 6500, subdivision 7, restricting the state's right of appeal in criminal cases to orders setting aside the indictment or information, orders arresting judgment on the ground the facts do not constitute a crime, or some material error in law not affecting the acquittal of the prisoner on the merits, the state has no right of appeal, where defendants, who have been discharged on habeas corpus, thereafter procure a dismissal of the proceedings against them and are awarded a judgment for costs on their preliminary examination: *State v. Murrey*, 30 Wash. 383, 70 Pac. 971.

No appeal to state, when.—An order of the court in a criminal prosecution withdrawing the case from the jury at the close of the state's case, and discharging the defendant, is a judgment on the merits of the case, and is not appealable by the state, under Laws 1893, page 120, section 1, subdivision 7 (Bal. Code, § 6500), which provides that an appeal shall not be allowed to the state in any criminal action except for some material error in law not affecting the acquittal of a prisoner on the merits: *State v. Hubbell*, 18 Wash. 482, 51 Pac. 1039.

What is an appealable order.—An order quashing a summons is, in effect, a determination of the action or proceeding, and therefore constitutes an appealable order, under Laws 1893, page 119, section 1: *Carstens v. Leidigh etc. Lumber Co.*, 18 Wash. 450, 63 Am. St. Rep. 906, 51 Pac. 1051.

The denial by the court of a motion to strike objections to the confirmation of a sale of real property under attachment levy is a final order affecting a substantial right and therefore appealable under Laws 1893, page 119, section 1: *Krutz v. Batts*, 18 Wash. 460, 51 Pac. 1054.

In an application for a writ of habeas corpus by a father to recover the custody of children who had been surrendered by the mother to defendant for the purpose of having him provide homes for them, an order of the court directing defendant to make application under the provisions of the statute for the disposition of said children, being advisory merely, is not an appealable order: *St. Clair v. Williams*, 23 Wash. 552, 63 Pac. 206.

A *lis pendens* notice can properly be filed only when there is an action pending involving the land covered by the notice, and the filing of such notice by one of the parties to an action after it has been determined against him constitutes a cloud upon his adversary's title, which he has a right to have removed; hence an order of the court refusing to act upon his motion for its cancellation is an order affecting a substantial right and therefore appealable: *Washington etc. Imp. Co. v. Kinnear*, 24 Wash. 405, 64 Pac. 522.

Alleged error of the court in overruling a motion to dissolve an attachment is reviewable on appeal from the final judgment, although not designated in the notice of appeal pursuant to the provisions of Ballinger's Code, in case the record shall show such order sufficiently for the purposes of a review thereof: *Bingham v. Keylor*, 25 Wash. 156, 64 Pac. 942.

The denial of an application to set aside a judgment is a final order, from which an appeal may be prosecuted, and as such is a final determination of the matter and *res judicata* against any subsequent proceeding seeking the same relief: *Wilson v. Seattle Dry Dock Co.*, 26 Wash. 297, 66 Pac. 384.

The action of the court in striking the petition of the state contesting a will that had been admitted to probate and praying for the revocation thereof is appealable; hence mandamus will not lie to compel the court to hear the contest and permit the state to establish its rights in the estate: *State ex rel. Stratton v. Tallman*, 29 Wash. 317, 69 Pac. 1101.

Where the supreme court, in reversing an order of the lower court granting defendant a new trial which had been granted on an erroneous ground, refused to review other grounds upon which the lower court ruled against defendant, the defendant may, upon the entry of judgment denying its motion, appeal therefrom itself, and have a review of the grounds urged by it originally, which had not been sustained at the time its motion for a new trial was under consideration by the lower court: *Gray v. Power Co.*, 30 Wash. 154, 70 Pac. 255.

An order sustaining a demurrer to an affirmative defense in an answer is reviewable upon an appeal from the final

judgment in the cause, under Laws 1893, page 119, section 1, although defendant may have gone to trial upon the denials in his answer (Mason County v. Dunbar, 10 Wash. 163, distinguished): Scott v. Hallock, 16 Wash. 439, 47 Pac. 968.

An order sustaining a demurrer to a complaint interposed by one of several defendants is appealable, although there has been no disposition of the case so far as another defendant is concerned, when the latter had never been served nor appeared in the action: Lough v. Davis, 30 Wash. 204, 70 Pac. 491.

An order granting plaintiff's motion for the voluntary dismissal of his action is an appealable one, where prior to such dismissal he has obtained an order of the court vacating a decree of foreclosure and sale thereunder in the same action, since the dismissal was a final order to the extent of entitling defendants to a review of the errors alleged in setting aside the decree: Dane v. Daniels, 28 Wash. 155, 68 Pac. 446.

An order sustaining a demurrer to a complaint in injunction is a final order and hence appealable, when the plaintiff refuses to plead further, though the effect of the court's ruling is the denial of a temporary injunction, since the matter determined is the sufficiency of the complaint and not the necessity for the issuance of a restraining order: Peters v. Lewis, 28 Wash. 366, 68 Pac. 869.

In an action by a corporation for a mandatory injunction requiring one who had been secretary to turn over the books, papers and money belonging to that office to one claimed to have been elected his successor, an order of the court requiring defendant to turn over such property to the president pending the litigation, owing to a dispute as to who was the legally elected secretary, is a temporary mandatory injunction and appealable under Ballinger's Code, § 6500, subdivision 3: State v. Superior Court, 28 Wash. 403, 68 Pac. 865.

Quashing summons appealable order.—An order of the court quashing a summons is appealable, under Laws 1893, page 119, section 1, subdivision 6 (Bal. Code, § 6500), when it appears that such order was based upon the court's opinion that, upon the merits of the action, the plaintiff could not prevail: Embree v. McLennan, 18 Wash. 651, 52 Pac. 241.

An order of the court sustaining a motion to quash a service of summons by publication, upon the ground that publication had not been commenced within ninety days after the filing of the complaint, as required by statute, in effect discontinues the action, and is an appealable order: Deming Investment Co. v. Ely, 21 Wash. 102, 57 Pac. 353.

Striking complaint.—Where a complaint has been filed against several defendants, and, before service has been obtained against all of them, the complaint has been stricken on motion of those served, an appeal lies from such order striking the complaint, although there has been no dismissal or other action taken with reference to the defendants not served: Keef v. Tibbals, 18 Wash. 656, 52 Pac. 227.

An order overruling a motion to quash a service of summons is not such a final order as determines the action, and hence is not appealable: Prussian Nat. Ins. Co. v. Northwest Ins. Co., 19 Wash. 281, 53 Pac. 158.

New trial.—An order granting a new trial is reviewable on appeal, although no abuse of the discretion of the trial court is shown, when such order is based solely upon an error of law: Dunkle v. Spokane Falls etc. Ry. Co., 20 Wash. 254, 55 Pac. 51.

Vacating judgment.—An order vacating a judgment must be attacked on the hearing of the motion therefor, or on appeal from the order, and cannot be questioned later by a motion to set it aside; hence, an order made denying the latter motion is not appealable: Hibbard v. Delanty, 20 Wash. 539, 56 Pac. 34.

Refusing to vacate.—An order made by the court refusing to vacate and set aside a final decree in a cause is not appealable, as an order affecting a substantial right: National Christian Assn. v. Simpson, 21 Wash. 16, 56 Pac. 844.

An order refusing to vacate a judgment is appealable, so as to bring up for review that part of the case seeking a vacation: In re Lamona's Estate, 29 Wash. 394, 69 Pac. 1093.

An order dissolving a writ of attachment is reviewable on appeal, when it is in effect a dismissal of the action and amounts to a final judgment: Augir v. Foresman, 23 Wash. 595, 63 Pac. 201.

The action of the court in denying plaintiff's motion for judgment against garnishee defendants, based upon their answer in the garnishment proceedings, is not such a final determination of the proceeding as to constitute an appealable order, within the contemplation of title 36, Ballinger's Code: Green v. Moore, 24 Wash. 241, 64 Pac. 151.

Not appealable order.—The action of the court in granting and continuing a temporary injunction pending the final disposition of an action cannot be reviewed on appeal, where the temporary injunction was dissolved on final hearing, but the remedy of defendant, if injured by its wrongful issuance, is by suit upon the injunction bond: Watkins v. Dorris, 24 Wash. 636, 64 Pac. 840.

An order sustaining a demurrer is not

an appealable one: *Padley v. Gregg*, 26 Wash. 322, 67 Pac. 72.

Where notice of appeal in a criminal action is given upon the denial by the court to grant a motion for a new trial and before the entry of judgment, the appeal must be dismissed, as not having been taken from an appealable order: *State v. Landes*, 26 Wash. 326, 67 Pac. 72.

An order vacating a judgment is not appealable under any of the provisions of Ballinger's Code, section 6500: *Nelson v. Denny*, 26 Wash. 327, 67 Pac. 78.

An order discharging an attachment is not appealable under Laws 1893, page 119, section 1, which specially provides for an appeal from an order refusing to discharge an attachment, but makes no provision for an appeal from an order discharging an attachment; nor is it applicable under the subdivision of that section, which permits appeal from any order affecting a substantial right by preventing a final judgment therein or discontinues the action: *Spokane Dry Goods Co. v. Fritz*, 26 Wash. 433, 67 Pac. 252.

The order of the lower court fixing the day of execution of one convicted of murder is not reviewable on appeal, and hence an appeal from such order affords no ground for an application for a stay of execution of the death sentence: *State v. Seaton*, 27 Wash. 120, 67 Pac. 572.

The order of the court denying the petition of an attorney in a probate proceeding for the allowance of his fees for services rendered the executor of a decedent's estate is not an appealable order: *Nash v. Wakefield*, 30 Wash. 556, 71 Pac. 35.

An order of the court discharging a jury for failure to agree and referring the case back for notice on the assignment list for a retrial thereof, is not the granting of a new trial, and hence not appealable under Ballinger's Code, section 6500, which authorizes appeal from an order granting a new trial: *Dossett v. Lumber Co.*, 28 Wash. 618, 69 Pac. 9.

An order sustaining demurrers to several affirmative defenses while other affirmative defenses and a general denial are left unaffected by the ruling, is not an appealable order, since such ruling does not in effect determine the action, and such questions can be reviewed on appeal from final judgment in the cause: *Old Nat. Bank v. Mining Co.*, 19 Wash. 194, 52 Pac. 1065.

Error, if any, in overruling a demurrer to a complaint will not be considered on appeal, where the alleged defect has been obviated by the amendment of the complaint on the trial: *Maris v. Clevenger*, 29 Wash. 395, 69 Pac. 1089.

Although under Ballinger's Code, section 6500, subdivision 7, all prior orders

made in a cause are reviewable upon appeal from a final order made after judgment, the review is restricted to such prior orders as were made in the course of the particular proceeding leading up to the final order appealed from, and would not include other orders made in different proceedings in the same action; hence an order denying a motion to vacate a judgment would not be reviewable upon an appeal from a subsequent order denying a like motion for vacation and asking for a rehearing of the original motion: *State v. Superior Court*, 30 Wash. 43, 70 Pac. 102.

Order consolidating causes for trial.—Error in ordering the consolidation of cases for trial is reviewable upon exceptions to the order of the court: *Griffith v. Seattle Bank Building Co.*, 16 Wash. 329, 47 Pac. 749.

An order fixing the compensation of an administrator of a decedent's estate is a final one, within the meaning of the statute authorizing appeals (Laws 1893, p. 119, § 1): *Sour v. Barto*, 17 Wash. 675, 50 Pac. 587.

Order for maintenance of widow from community estate of husband and former wife.—An order for the maintenance of a widow from the interest of her deceased husband in the community estate of himself and a former wife is appealable, although a prior order for the payment of such maintenance from the community estate of her husband and his former wife was unappealed from, when it appears that the later order was intended to supersede the former one: *Estate of Cannon*, 18 Wash. 101, 50 Pac. 1021.

Interest of appellant.—When the allowance of a claim or a charge against an estate will materially diminish it, the executor, in his representative capacity, has such an interest in the proceedings as to warrant an appeal by him from any order tending to impair the estate in his hands: *Estate of Cannon*, 18 Wash. 101, 50 Pac. 1021.

Jurisdiction.—The supreme court has no jurisdiction of an appeal from an uncontested dismissal of a case, in which plaintiff failed to offer an amendment to his complaint within the time limited after a demurrer thereto was sustained: *Hall v. Skavdale*, 21 Wash. 203, 57 Pac. 807.

An appeal lies to the supreme court from a judgment remanding a prisoner on habeas corpus, under Ballinger's Code, section 6500, authorizing an appeal "in any action or proceeding," and Ballinger's Code, section 5739, declaring that a judgment in a special proceeding is a final determination of the rights of the parties therein: *In re Foye*, 21 Wash. 250, 57 Pac. 825; *In re Baker*, 21 Wash. 259, 57 Pac.

827; *In re Sylvester*, 21 Wash. 263, 57 Pac. 829.

Amount in controversy.—Where the amount claimed is reduced below the \$200 limit of the constitution, section 4, article 4, by amendment, appeal will not be sustained: *Huber v. Brown*, 17 Wash. 4, 48 Pac. 412.

On appeal from a judgment dismissing a complaint on the ground that it fails to state facts sufficient to constitute a cause of action, the amount in controversy is immaterial and does not affect the jurisdiction of the supreme court: *Griffith v. Maxwell*, 20 Wash. 403, 55 Pac. 571.

In an action against a surety upon a supersedeas bond given in certiorari proceedings, to recover the amount of the judgment and costs, together with an attorney's fee for defending the certiorari proceedings, the claim for attorney's fee is not a part of the judgment or amount in controversy; and where the sum sued for, without the claim for attorney's fee, does not exceed the sum of \$200, the supreme court has no jurisdiction on appeal: *Leavitt v. Carr*, 22 Wash. 361, 60 Pac. 1044.

§ 6501. Designation of parties.—Ballinger's Code, section 6501, which provides that the party appealing shall be known as the appellant and the adverse party as the respondent, and they shall be so designated in all papers in the cause after the notice of appeal shall have been given or served, is not mandatory in the sense that a failure to comply literally with such provisions would be ground for dismissal of the appeal: *In re Alfstad's Estate*, 27 Wash. 175, 67 Pac. 593.

§ 6502. Time of taking.—Under Laws 1895, page 82, an appeal in a criminal case is ineffectual unless taken within ninety days after the entry of final judgment: *State v. Symes*, 17 Wash. 596, 50 Pac. 487.

A judgment dismissing an action is a final judgment, and, under Laws 1895, page 81 (Bal. Code, § 6502), the limitation upon appeal therefrom is ninety days after the date of entry of such judgment, and not the fifteen day limitation upon all orders other than final orders, provided for by the same statute: *Seattle Ry. Co. v. Simpson*, 19 Wash. 628, 54 Pac. 29.

Under the statutes governing appeals, the provisions requiring that an appeal from an order that is not a final judgment be taken within fifteen days, that notice of appeal be filed with the clerk within five days after its service, and that the appeal bond be filed within five days after the service of the notice, are jurisdictional and must be strictly complied with: *Hibbard v. Delanty*, 20 Wash. 539, 56 Pac. 34.

The time within which an appeal may be taken from a final judgment begins to

run from the date of its entry, whether the party desiring to appeal has notice thereof or not: *National Christian Assn. v. Simpson*, 21 Wash. 16, 56 Pac. 844.

The fifteen day limitation does not begin to run until compliance with the statutory requirement of service of such written notice, irrespective of the fact of the appellant's having actual knowledge otherwise of the entry of the order: *Otis Bros. & Co. v. Nash*, 26 Wash. 39, 66 Pac. 111.

Where an appellant has actual notice of the granting and entry of the order appealed from, although not served with written notice thereof, the time for taking his appeal begins to run from the date of entry of the order, and where not taken within fifteen days after entry as prescribed by Ballinger's Code, section 6502, the appeal should be dismissed: *Donison v. Spokane*, 27 Wash. 317, 67 Pac. 561.

§ 6503. Notice, how served.—Service of a notice of appeal by mail is sufficient, under Ballinger's Code, sections 4890, 4891, 6504, when the person making the service and the person upon whom service is made reside in different places between which there is regular communication by mail: *De Roberts v. Stiles*, 24 Wash. 611, 64 Pac. 795.

A notice served upon the attorney for all the prevailing parties, but addressed to him as attorney for but one of them, is sufficient: *In re Murphy's Estate*, 26 Wash. 223, 66 Pac. 424.

Notice may be served by new attorneys employed by appellant for that purpose without notice to respondent, since Ballinger's Code, sections 4769, 4770, governing the substitution of attorneys is expressly confined to changes made before judgment or final determination: *Belle City Mfg. Co. v. Kemp*, 27 Wash. 111, 67 Pac. 580.

The fact that a judgment consists of several parts, in that it makes separate awards in favor of several defendants, would not require plaintiff to give distinct notices of appeal from the several judgments rendered: *Clark v. Elting*, 29 Wash. 215, 69 Pac. 736.

The failure to serve interveners who have appeared in a cause with notice of appeal is ground for dismissal of the appeal, even though the interveners have been permitted to dismiss their complaint in intervention after the appeal was taken: *Old Nat. Bank v. Mining Co.*, 19 Wash. 194, 52 Pac. 1065.

The rule requiring service of notice of appeal on all parties who do not join in the appeal does not apply in cases where one named as a party has never in any way appeared in the action: *Eldridge v. Stenger*, 19 Wash. 697, 54 Pac. 541.

Where third parties have obtained possession of personal property levied on by the sheriff by giving a forthcoming bond

therefor, and, in an action to try the right of title to the property, judgment has gone against such claimants and their sureties upon the bond, on appeal from such judgment the sureties should either be made parties appellant or notice of appeal served upon them, under the provisions of the statute (Laws 1893, p. 120), that notice of appeal shall be served upon all parties to an action who do not join in the appeal. The fact that the sureties are named in the body of the notice of appeal as appealing from the judgment is not a sufficient compliance with the requirements of the statute, when the notice is not signed by the sureties nor by their attorney. In an action of claim and delivery, while the sureties are necessarily parties to the action, they are not plaintiffs, as their principals are, and a notice given by the attorneys of plaintiffs is not binding on the sureties: *Carstens v. Gustin*, 18 Wash. 91, 50 Pac. 933.

Upon appeal from an order in a cause in which a receiver had theretofore been appointed, the receiver is a necessary party and entitled to be served with notice of the appeal: *Pacific Coast Trading Co. v. Bellingham Bay Base Ball Assn.*, 18 Wash. 245, 51 Pac. 382.

Second notice, effect of.—A second notice of appeal may be given and the appeal perfected thereunder, without a formal order of dismissal of an appeal attempted under a prior notice: *Sligh v. Shelton Southwestern R. R. Co.*, 20 Wash. 16, 54 Pac. 763.

Form of notice of appeal.—Where the journal entry of the clerk of the court recites that appellant "gives notice of appeal in open court from the final judgment this day made in the above-entitled cause," it raises the presumption that notice was given at the time the judgment was rendered. A notice of appeal designating what orders are appealed from designates with sufficient clearness the grounds of appeal, within the requirements of Laws 1893 page 121, section 4 (Bal. Code, § 6503). A notice of appeal reciting that appellant "gives notice of appeal from the final judgment this day made in the above-entitled cause, and also gives notice that he will appeal from the order entered February 24, 1897," etc., is sufficient as a notice of appeal from the order of February 24th, though not in apt language, as Laws 1893, page 120, section 1. subdivision 7 (Bal. Code, § 6500), provides that an appeal from any final judgment shall also bring up for review any order made in the same action either before or after judgment in case the record sent up on the appeal shall show such order sufficiently for the purposes of a re-

view: *Thompson v. Sines*, 18 Wash. 359, 51 Pac. 474.

Designation of judgment or order.—A notice of appeal setting forth that appeal is taken from the final orders entered by the court on January 12, 1898, which dismiss the petition herein as to the plaintiffs and defendants mentioned in the notice and in the cause, designates with sufficient certainty from what judgment the appeal is taken: *Roberts v. Shelton Southwestern R. R. Co.*, 21 Wash. 427, 58 Pac. 576.

A notice of appeal which recites "that the defendant in the above-entitled action hereby appeals from the judgment made and entered herein against the defendant on the twenty-fourth day of July, 1900, to the supreme court of the state of Washington, and from the whole and every part thereof," is sufficient, although the judgment was signed by the judge July 16th, but not filed and entered by the clerk till July 24th, when there was but one judgment in the case, and the respondent could not have been misled: *Shannon v. Mining Co.*, 24 Wash. 119, 64 Pac. 169.

Notice of appeal which recites that it is "from an order, decree, and judgment . . . refusing to vacate and set aside the judgment rendered and entered herein, and for refusing to grant a new trial, and from each and every part thereof. Such judgment having been rendered and entered September 13, 1900, and September 17, 1900, and the motion for new trial overruled September 17, 1900," is sufficient only for the review of the action of the court in refusing to vacate the original judgment; and does not bring up for review the orders made by the court prior to such original judgment: *Norris v. Campbell*, 27 Wash. 654, 68 Pac. 339.

Parties to whom given.—Service of notice of appeal upon parties who have not appeared in the action is unnecessary. Notice to respondents of the settlement of a statement of facts is unnecessary, where no objections to the proposed statement have been filed, nor substantial amendments proposed: *Home Assn. v. Burton*, 20 Wash. 689, 56 Pac. 940.

Notice of appeal need not be given to one who has attempted to intervene in a cause, but who has failed to obtain leave of court to file his complaint, as required by Ballinger's Code, section 4846: *Wiseman v. Eastman*, 21 Wash. 163, 57 Pac. 398.

When a party to an action has not appeared except for the purpose of disclaiming any interest in the subject matter of the suit, he is not a necessary party to the suit, and need not be served with notice thereof: *Bank v. Hardware Co.*, 30 Wash. 127, 70 Pac. 251.

A defendant who disclaims any interest in the subject matter of an action is not a necessary party to an appeal from the judgment therein, and therefore need not be served with notice of appeal: *Smalley v. Laugenour*, 30 Wash. 307, 70 Pac. 786.

The statutory provision requiring notice of appeal to be served on all parties who have appeared in the action does not require that the notice shall be directed to all parties who have appeared, but it is sufficient if the notice shall be directed to the prevailing parties: *Id.*

The fact that attorneys for appellants are also attorneys for one of the other parties to the action would not debar their serving themselves with notice of appeal as attorneys for such client not appealing, when there is nothing in the record showing a conflict of interest between their clients: *Id.*

Filing notice in clerk's office.—Jurisdiction to hear an appeal is not conferred upon the supreme court where the appellant does not file his notice of appeal in the clerk's office until seven days after its service on respondent, when the statute requires that such filing should be made within five days after service: *State v. Butler*, 19 Wash. 110, 52 Pac. 521.

An appeal from an order other than a final order will be dismissed, where notice of appeal was not given in open court at the time the order was made, nor written notice served and filed within fifteen days after notice of entry of the order: *Cole v. Price*, 22 Wash. 18, 60 Pac. 153.

Proof of service of notice of appeal.—Under the statutes of this state governing appeals, it is unnecessary that proof of service of a notice of appeal should show where it was served, since service may, by statute, be made either within or without the state, and written admission of service is sufficient, without stating the place and manner of service, as is required in proof of service of summons: *Sackman v. Thomas*, 24 Wash. 660, 64 Pac. 819.

Where an acknowledgment by respondents of service of a notice of appeal is dated on the same day as the filing of the notice, the presumption is that the service was made before the filing: *Yakima Water etc. Co. v. Hathaway*, 18 Wash. 377, 51 Pac. 471.

Where a supplemental transcript filed by appellant shows that a second notice of appeal sufficient in all respects was duly served and filed, an objection that the proof of service of notice of appeal as set out in the original transcript is inadequate, is without merit: *Embree v. McLennan*, 18 Wash. 651, 52 Pac. 241.

Failure to file proof of service of a written notice of appeal within five days after service, as required by Laws 1893,

page, 121, section 4, is not excused by the fact that oral notice was given in open court, where the appeal bond was not filed until the giving of the second notice which was more than twenty days after such oral notice had been given. An admission by respondent of notice of the filing of appellant's proposed findings and his exception to those found by the court does not obviate proof of service of an appeal notice. Notice of appeal and proof of service thereof are jurisdictional matters, and where the record does not show such proof of service the fact of service cannot be established subsequently in the appellate court by the introduction of affidavits: *Puckett v. Moody*, 17 Wash. 609, 50 Pac. 494.

Notice of, in open court.—When it is manifest from the entire record that notice of appeal has been duly given in open court, the fact that the clerk's entries recite that appellants gave notice in open court that they "intended to appeal" will be presumed as inadvertently entered. The presumption arises from the fact that entry of a notice of appeal has been made that the clerk was directed by the court to make it, and it is unnecessary for the record to recite that the clerk was so directed: *Ranahan v. Gibbons*, 23 Wash. 255, 62 Pac. 773.

§ 6504. Notice of appeal to join existing appeal.—Under Laws 1893, page 121, section 5, where an appeal has already been taken from a decree and is pending undismissed, another party desiring to join in the appeal, or take an independent appeal from the same decree, must do so within ten days after service of notice upon him of the prior appeal: *Griffith v. Seattle Bank Bldg. Co.*, 16 Wash. 329, 47 Pac. 749.

Laws 1893, page 121, section 5, providing that parties similarly affected may join in an appeal within ten days after service of notice of appeal does not apply in a case where, after an appeal has been taken by one party, the adverse party also desires to prosecute an appeal from the same judgment. The supreme court will entertain more than one appeal from the same judgment in an equity cause, where the appeals are all perfected and the cause submitted to the court at one time, so the whole matter may be finally disposed of on one hearing (*Hill v. Sawyer*, 14 Wash. 275, distinguished): *Damon v. Leque*, 17 Wash. 573, 61 Am. St. Rep. 927, 50 Pac. 485.

Where a party to an action appeals without serving notice upon his codefendants, the action of the parties not served in later joining in the appeal bond, but neglecting to join in the appeal by statement filed with the clerk or to serve an

independent notice of appeal, will not confer jurisdiction upon the supreme court, under Laws 1893, page 121, section 5, governing notice in cases where parties similarly affected desire to appeal: *Winters v. Gray's Harbor Boom Co.*, 19 Wash. 346, 53 Pac. 368.

§ 6505. Appeal bond.—Failure to give appeal bond in five days after notice of appeal deprives the supreme court of jurisdiction: *Ramage v. Littlejohn*, 16 Wash. 702, 47 Pac. 888.

A dismissal as to one respondent does not render the appeal bond ineffectual as to co-respondents: *Taake v. City of Seattle*, 16 Wash. 90, 47 Pac. 220.

Form of.—An appeal bond sufficiently describes the judgment when it refers to it as having been made on July 16th, when it was in fact signed by the judge on that date, but not entered by the clerk until July 24th—there being but one judgment in the case. An undertaking given on appeal, intended both as an appeal bond and a supersedeas bond, which undertakes "that the appellant will satisfy and perform the judgment appealed from," is sufficient, without mentioning the name of the obligee with particularity: *Shannon v. Mining Co.*, 24 Wash. 120, 64 Pac. 169.

Execution of, by whom.—An appeal bond signed by the attorney for appellants instead of by the appellant personally is not defective on that ground, under the appeal act of this state: *Hill Estate Co. v. Whittlesey*, 21 Wash. 142, 57 Pac. 345.

It is not necessary that an appeal bond by a surety company should show on its face, either that the company has complied with the laws of the state relating to recognizances, stipulations, bonds and undertakings, or that it is legally authorized to do business in the state: *Robets v. Railway Co.*, 21 Wash. 427, 58 Pac. 576.

Under Ballinger's Code, section 6506, providing that the bond on appeal must be executed in behalf of the appellant by one or more sureties, it is not a defect for one of several appellants to omit joining in the execution of the bond, if the bond is sufficiently executed by sureties in his behalf: *Lumber Co. v. Loy*, 21 Wash. 501, 58 Pac. 672.

Public officers need not furnish an appeal bond, when they appeal in behalf of public corporations which by law are exempted from the necessity of furnishing such a bond: *Townsend Light Co. v. Hill*, 24 Wash. 469, 64 Pac. 778.

Where sureties upon an appeal bond are named in the body of the bond and subscribe to the justification, it is a sufficient execution by them of the bond, although their names may not be sub-

scribed to the bond otherwise: *Yakima Water etc. Co. v. Hathaway*, 18 Wash. 377, 51 Pac. 471.

An appeal bond upon which the surety is a guaranty company whose name is signed by its attorney in fact is not defective in form because evidence of his authority to so sign was not filed with the bond: *Id.*

An appeal bond is insufficient when it has no other sureties thereon than parties against whom the judgment appealed from was entered: *David v. Guich*, 30 Wash. 266, 70 Pac. 497.

Where the appeal bond executed by appellant was ineffective and the time for filing a bond had expired, his appeal will be dismissed without his being permitted to file a new and sufficient bond: *Id.*

Giving bond—Jurisdictional, as to time. The giving of an appeal bond is jurisdictional, and an insufficient bond cannot be remedied by the filing of an additional one, where the time provided by law for the filing of the bond has expired: *Galloway v. Tjossem*, 22 Wash. 103, 60 Pac. 129.

Under Ballinger's Code, section 6505, which provides that the appeal bond may be filed with the clerk "at or before the time when the notice of appeal is given or served," a bond filed on August 25th was in due time, when notice of appeal was given on August 24th and filed on the next day: *Shannon v. Mining Co.*, 24 Wash. 120, 64 Pac. 169.

Who must join in bond.—Where the appeal bond required by Laws 1893, page 122, section 6, has been given by only one of several defendants who have jointly given notice of appeal, the appeal is ineffectual as to the appellants not joining in the execution of the bond; and where the appellant who has executed the bond has failed to give notice of appeal, as required by Laws 1893, page 122, section 5, to be given parties not joining, to the defendants purporting to join in the appeal, but who have failed to perfect their rights by filing the required bond, the appeal should be dismissed for want of jurisdiction: *Hopkins v. Satsop Ry. Co.*, 18 Wash. 679, 52 Pac. 349.

A garnishee is not such an adverse party as to require the giving of a bond to him upon an appeal by plaintiff from a judgment in the principal action in favor of defendant, as the garnishment proceeding is merely incidental to the principal action and the garnishee has no interest in the subject matter of the appeal which will be affected by a reversal or modification of the judgment appealed from: *Seattle Trust Co. v. Pitner*, 17 Wash. 365, 49 Pac. 505.

Affidavits of justification of some sureties on the bond, before another surety, a notary, does not vitiate the bond: *Id.*; *Lumber Co. v. Loy*, 21 Wash. 501, 58 Pac. 672.

Exceptions to, must be made in superior court.—Where no exceptions to the sufficiency of an appeal bond have been taken in the trial court, the appellate court will not pass upon its sufficiency. Affidavits in support of an objection to the sufficiency of an appeal bond, first raised in the appellate court, will not be considered by the court, if objected to: *Jenkins v. Jenkins University*, 17 Wash. 160, 49 Pac. 247.

Objection to an appeal bond, because the justification of the sureties is technically defective, cannot be raised for the first time in the appellate court: *Sligh v. Shelton*, 20 Wash. 16, 54 Pac. 763.

Cash in lieu of bond.—Although an appellant may have deposited a bank check instead of cash with the clerk of the superior court in lieu of an appeal bond, a certificate by the clerk to the effect that the appellant had deposited the required sum in gold coin is conclusive of the fact that money was deposited as required by the statute: *In re Sullivan's Estate*, 25 Wash. 430, 65 Pac. 793.

Contempt proceedings.—Proceedings against defendant as for contempt, in refusing to obey the order of the court compelling him to pay alimony upon a decree of divorce, do not constitute a criminal action; hence the failure to give an appeal bond upon an appeal from an order adjudging the appellant in contempt is not warranted by Laws 1893, page 122, section 6 (Bal. Code, § 6505), which provides that no bond shall be required when the appeal is taken by a defendant in a criminal action: *State ex rel. Geiger v. Geiger*, 20 Wash. 181, 54 Pac. 1129.

§ 6506. Supersedeas bond—Form and sufficiency of.—An appeal will not be dismissed on account of failure to comply with the exact terms of the statutory requirements in the appeal bond, where its conditions are such as to protect every right of the respondent: *Anderson v. Bigelow*, 16 Wash. 198, 47 Pac. 426.

A stay bond conditioned that appellant "will abide the order of the court on such appeal, and pay all rents and other damages accruing to the plaintiff during this appeal, not exceeding the amount of four hundred dollars," etc., substantially accords with the requirements of Laws 1893, page 123, section 7, which provides that "an appeal bond shall not stay proceedings on the judgment or order appealed from . . . unless the original or a subsequent appeal bond be further con-

ditioned that the appellant will satisfy and perform the judgment or order appealed from in case it shall be affirmed, and any judgment or order which the supreme court may render or make, . . . and (where such condition is applicable) shall pay all rents of or damages to property accruing during the pendency of the appeal, out of the possession of which any respondent shall be kept by reason of the appeal: *Northwestern etc. Bank v. Griffiths*, 17 Wash. 98, 49 Pac. 223.

On appeal from a money judgment for the sum of \$1,400, an appeal bond in the sum of \$3,200, conditioned to pay all costs and damages that may be awarded against the appellant on the appeal not exceeding \$200, and to satisfy and perform the judgment or order appealed from in case it shall be affirmed, and any judgment or order which the supreme court shall make or order to be rendered by the superior court, fully complies with the requirements of Ballinger's Code, sections 6505, 6506, on the subject of appeal and supersedeas bonds: *Anderson v. Provident Life & Trust Co.*, 26 Wash. 192, 66 Pac. 415.

An appeal bond which is conditioned that appellants "shall pay all costs and damages that may be awarded against them on such appeal or dismissal thereof, not exceeding the sum of \$200; and shall perform and satisfy any judgment which said court may make or order to be made or rendered by the superior court in case said judgment is affirmed," is clearly conditioned both as an appeal and a stay bond, and is insufficient when the penalty is not in a sum double the amount of the judgment, and \$200 additional: *Hewitt v. Landsdale*, 26 Wash. 615, 67 Pac. 354.

An appeal bond is not nugatory because it runs to the sureties on plaintiff's cost bond as well as to the respondents, where it is conditioned to satisfy and perform the judgment on appeal, and is therefore ample to protect the rights of respondents: *White Crest Canning Co. v. Sims*, 29 Wash. 389, 70 Pac. 1003.

The fact that an appeal bond was signed by one of the obligees named therein would not render it void, provided it had another and a sufficient surety thereon: *Id.*

An appeal by a city from a judgment against it operates as a supersedeas of the judgment and any execution thereof, without the necessity of bond, and hence an order of the court commanding the city comptroller to issue a warrant on a judgment against the city was properly vacated, where an appeal from such judgment was subsequently taken by the city: *Jordon v. Seattle*, 29 Wash. 581, 70 Pac. 54.

Where a judgment required a party to pay a certain sum of money and costs, and, further, to perform certain acts within a period of thirty days, or in default of such performance, a money judgment in certain sums would be awarded against the party, on appeal therefrom a supersedeas bond fixed by the court in a sum larger than double the amount of the money judgment and \$200 additional, but less than double the amount conditionally required to be paid, is sufficient: *Title etc. Co. v. McDonnell*, 28 Wash. 359, 68 Pac. 890.

An appeal bond for \$400, conditioned both as a stay bond and a cost bond on appeal, is insufficient to confer jurisdiction on the supreme court, under Laws 1893, page 122, sections 6, 7, when the appeal is from a money judgment in the sum of \$525: *Town of Sumner v. Rogers*, 21 Wash. 361, 58 Pac. 214.

An appeal bond for \$650, which purports to be both a supersedeas bond and a cost bond on appeal, is insufficient to confer jurisdiction on the supreme court, under Laws 1893, page 122, sections 6, 7, when the appeal is from a money judgment in the sum of \$282: *Galloway v. Tjossem*, 22 Wash. 103, 60 Pac. 129.

A bond on appeal conditioned both as a supersedeas and as an appeal bond, in order to be sufficient, must be executed for such a penal sum as will include a sum double the amount of the judgment appealed from, added to the \$200, required in all appeal bonds as security for costs: *Bezley v. Sessions*, 22 Wash. 125, 60 Pac. 130.

Where a bond conditioned both as an appeal and as a stay bond is not executed in an amount that is twice the amount of the judgment, and \$200 additional, as the statutes require, it is insufficient to give the supreme court jurisdiction, even though a portion of the judgment making an allowance for attorney fees is absolutely void: *Ritchey v. Cedar Mill Co.*, 22 Wash. 511, 61 Pac. 160.

A judgment in favor of defendant for costs upon the dismissal of plaintiff's action is a judgment for money, and a supersedeas bond upon appeal therefrom need only be in a sum double the amount of such costs, in addition to the \$200 penalty required in the appeal bond: *West Coast etc. Co. v. West Coast Imp. Co.*, 25 Wash. 627, 66 Pac. 97.

A bond for \$200 conditioned both as a stay bond and a cost bond on appeal is insufficient to confer jurisdiction on the supreme court, under Laws 1893, page 122, sections 6, 7 (Bal. Code, §§ 6505, 6506), which provide that an appeal bond in the penalty of \$200, conditioned for the payment of costs and damages, must be given; and, in case a stay of proceedings

is sought, the bond, where the appeal is from a final judgment for the recovery of money, shall be in a penalty double the amount of the damages and costs recovered in such judgment, and in other cases shall be in such penalty, not less than two hundred dollars, as a judge of the superior court shall prescribe: *Pierce v. Willeby*, 20 Wash. 129, 54 Pac. 999.

Supersedeas—In prohibition.—In computing the amount necessary for a supersedeas bond on appeal by defendants, there should be excluded from the computation the sum deposited by them in court by way of tender and subsequently adjudged and paid to plaintiff, and the supersedeas bond consequently need only be in double the amount of the recovery against them as that constitutes the real subject of controversy: *Young v. Borzone*, 26 Wash. 4, 66 Pac. 421.

Operation of supersedeas in certain cases.—The filing of a supersedeas bond on appeal only stays proceedings in the case as it exists at the time of the rendition of the judgment, and would not relate back to an anterior order of the court appointing a receiver in the case. Also holds that the appointment of receiver under section 5941 cannot be superseded by bond under this section: *Anderson v. Tingley*, 20 Wash. 592, 56 Pac. 371.

On an appeal from an order awarding a temporary mandatory injunction, commanding an officer of a corporation to deliver the property belonging to his office to another, the order may be superseded in that respect: *State ex rel. Byers v. Superior Court*, 28 Wash. 404, 68 Pac. 865.

On an appeal from a judgment annulling a will a supersedeas bond is unnecessary for the purpose of staying proceedings pending appeal, since the costs and expenses of the proceedings are payable out of the property of the deceased, under Ballinger's Code, section 6116: *State ex rel. v. Superior Court*, 28 Wash. 677, 69 Pac. 375.

On appeal by an executor from an order revoking the probate of a will and his appointment as executor, his general powers are not thereby revived, but the effect thereof would be merely to continue him as executor for the purposes of the appeal only: *Id.*

A respondent who disregards the stay of proceedings allowed upon an appeal from a judgment against appellant for damages and the restitution of premises, in that he evicts the appellant pending the appeal from free and full use of the premises by shutting off his heat, light and water and by nailing up some of the entrances thereto, is not entitled, on an affirmance of his judgment, to judgment

against the surety upon the supersedeas bond for anything more than the costs of his appeal, but is relegated to his action on the bond to recover further relief, where the inducement for the surety company to assume liability was its belief that appellant would be able to make enough out of his business on the premises to save the surety harmless: *Quandt v. Smith*, 29 Wash. 311, 69 Pac. 1097.

A judgment creditor has no right of action upon an appeal bond, which had been given as collateral security for the judgment, when, without the consent of the judgment debtor, he has assigned the judgment itself to another, while reserving to himself all the rights under the appeal bond, since the assignment of the judgment carries the appeal bond as incident to it, even though the assignor and assignee may have agreed otherwise: *Lewis v. Third St. & Suburban Ry. Co.*, 26 Wash. 28, 66 Pac. 150.

On appeal from a judgment quashing an alternative writ of prohibition, a bond conditioned as a supersedeas does not operate as a suspension of the judgment: *State ex rel. Barnard v. Board of Education*, 19 Wash. 8, 67 Am. St. Rep. 706, 52 Pac. 317.

Fixing amount of bond.—The writ of prohibition will not issue to restrain the superior court from fixing the amount of a bond to stay the execution of a temporary mandatory injunction pending appeal, where the injunction was issued upon a hearing by the court after notice given to all parties: *State v. Superior Court*, 30 Wash. 197, 70 Pac. 233.

Upon a showing of the superior court's refusal to fix the amount of a supersedeas bond staying the execution of a restraining order pending appeal, the supreme court, although denying the writ of certiorari in the cause, will direct the lower court to fix the amount of such bond: *State v. Superior Court*, 30 Wash. 177, 70 Pac. 256.

A bond to supersede the operation of an order appointing a receiver must be given for that purpose. An appeal from an order appointing a receiver will not operate as a stay of proceedings under the receivership, when no supersedeas bond has been given for the purpose of superseding the receiver pending the appeal: *State ex rel. v. Superior Court*, 30 Wash. 232, 70 Pac. 484.

§ 6509. Justification of sureties.—Where the surety upon an appeal bond is a guaranty company, no justification by the surety is required: *De Roberts v. Styles*, 24 Wash. 611, 64 Pac. 795.

A bond will be deemed sufficient by the supreme court when it has but one surety, who justifies in the exact amount of the

bond instead of double the amount thereof, and whose affidavit of justification, although he is a married man, does not state he is worth the sum mentioned in separate property, but merely follows the language of the justification prescribed by the statute: *Murray v. Moynahan*, 27 Wash. 379, 67 Pac. 810.

The fact that the surety upon an appeal bond is an attorney at law would not disqualify him, in the absence of a statute prohibiting attorneys from acting in that capacity: *Id.*

The fact that the acknowledgment and affidavit of justification upon an appeal bond are combined instead of being separately stated is not ground of objection, where the affidavit follows the demands of the statute: *Id.*

An appeal will be dismissed where the sureties upon the appeal bond have failed to comply with the order of the court to appear and justify as to their sufficiency, and no new bond has been filed by the appellant: *Starling v. Burdette*, 28 Wash. 261, 68 Pac. 723.

§ 6510. Exceptions to sureties.—When the sufficiency of the sureties on an appeal bond is challenged by respondent, and notice thereof filed as required by law, the bond is thereafter insufficient for purposes of appeal, unless approved by the judge: *Glover v. Cove*, 16 Wash. 323, 47 Pac. 737.

The action of the lower court in permitting the second appeal bond filed in a case to be amended by the substitution of a new surety in place of one found to be insufficient upon the bond as filed, is contrary to Laws 1893, page 125, section 11: *State v. Chapman*, 17 Wash. 109, 49 Pac. 224.

The giving of a second appeal bond within five days after certification by the judge as to the insufficiency of the first is in sufficient time, although the certificate was not made until the day succeeding the examination of the sureties and without adjournment from said day to the day following: *Pennsylvania Mtg. Inv. Co. v. Gilbert*, 18 Wash. 66, 52 Pac. 246.

The testimony of sureties upon an appeal bond, taken on the court's examination as to their qualifications, need not be reduced to writing and attached to the judge's certificate, in the absence of a motion by the party aggrieved to have a record made thereof: *Hyatt v. Lewis*, 20 Wash. 303, 55 Pac. 217.

Service on respondent of the appeal bond or written notice of its filing is not mandatory under Ballinger's Code, section 6510, which provides that "any respondent may except to the sufficiency of the surety or sureties in an appeal bond, within ten days after the service on him of the notice of appeal or within five days

after the service on him of the bond or written notice of the filing thereof: *De Roberts v. Styles*, 24 Wash. 611, 64 Pac. 795.

Where objection is made to the sufficiency of the sureties upon an appeal bond, and a day is set for their examination,

but they fail to appear and justify on said day, the appellant is warranted, under Ballinger's Code, section 6510, in filing within five days thereafter a new bond with new sureties: *Wallace v. Packing Co.*, 25 Wash. 143, 64 Pac. 938.

§ 6513. The Record—Filing—Duties of Clerk of Superior Court.

Within ninety days after an appeal shall have been taken by notice as provided in this title, the clerk of the superior court shall prepare, certify and file in his office, at the expense of the appellant (except in criminal appeals prosecuted in forma pauperis, and in such cases at the expense of the county), a transcript containing a copy of so much of the record and files as the appellant shall deem material to the review of the matters embraced within the appeal, said transcript to be so prepared, certified and filed, in the office of the clerk, at or before the time when the appellant shall serve and file his opening brief, as hereinafter provided. Within four months after said appeal shall have been taken by notice as aforesaid, the clerk of the superior court shall, at the expense of appellant, send up to the supreme court said transcript together with the original briefs on appeal filed in his office. The papers and copies so sent up together with any thereafter sent up as hereinbelow provided, shall constitute the record on appeal. Any bill of exceptions or statement of facts on file when the record is so sent up shall be sent up as a part thereof, unless the superior court or a judge thereof has not yet passed on an application for the settlement and certifying of such bill or statement. In case any bill of exceptions or statement of facts shall be filed or certified, or any other addition to the records or files shall be made after the record on appeal shall have been sent up, a supplementary record on appeal embracing so much thereof as the appellant deems material, or a copy thereof may be prepared, certified and sent up at any time prior to the hearing of the appeal. And in case the respondent deems any part of the files or record not already sent up to be material to the review of the matters embraced within the appeal, he may cause the clerk, in like manner, at his expense, to prepare, certify and send up a supplementary record on appeal embracing such omitted files or records, or copies thereof, at any time prior to the hearing of the appeal. Any such supplementary record or records, if filed in the supreme court prior to the hearing of the appeal, shall be considered by the court as part of the record on appeal, so far as the same may be material to a review of the matters embraced within the appeal. When the review of an original paper in the cause may be important to a correct decision of the appeal, the court or judge may order the clerk to transmit the same to the clerk of the supreme court and the same shall be transmitted accordingly, and shall be under the control of the supreme court. [Amendment, approved Feb. 28, 1901; L. 1901, p. 29.]

§ 6513. Appeal—Record—What constitutes.—An abstract of evidence, exhibits, record and proceedings, prepared and printed by an appellant for the use of the court on appeal, is no part of the record:

Tacoma v. Light & Water Co., 16 Wash. 288, 47 Pac. 738.

Where a record on appeal is susceptible of two constructions, owing to its indefiniteness, the appellate court will adopt

that construction which will sustain the judgment of the lower court: *City of Seattle v. Whitworth*, 18 Wash. 126, 51 Pac. 345.

The record on appeal sufficiently shows that the jury in a criminal case was properly sworn, when it sets out that "the jury was sworn to try the cause well and truly," as it is not necessary that the record contain the language of the oath for the purpose of showing conformity to the language of the statute. The statement in the record on appeal of a criminal case that the jury retired in charge of a sworn bailiff is sufficient to show that the bailiff was duly sworn: *State v. Barkuloo*, 18 Wash. 142, 51 Pac. 350.

Sufficiency of record.—Where judgment has been entered in a cause based upon an agreed statement of facts and a stipulation for a waiver of formal pleadings, and the facts are sufficiently stated to show the claims of the respective parties, such statement of facts and stipulation are a sufficient record to warrant the action of the appellate court thereon in case of appeal: *Yakima Water Co. v. Hathaway*, 18 Wash. 377, 51 Pac. 471. See, also, *Linder v. Newman*, 18 Wash. 481, 51 Pac. 1039.

The action of the trial court in reinstating a cause on the calendar after its dismissal for failure to furnish security for costs will not be reviewed on appeal, in the absence from the record of the petition on which it was based: *Hall v. Woollery*, 20 Wash. 440, 55 Pac. 562.

When the trial court has certified that the record contains so much of the "facts, matters and proceedings heretofore occurring in said cause" as is material to an appeal from the final judgment, the appellate court must accept the certificate as true: *State v. Dunn*, 22 Wash. 67, 60 Pac. 49.

Affidavits and written statements will not be stricken from the transcript on appeal, when the trial court has certified that the same were presented to the court and passed upon on the hearing of a motion for a new trial and in arrest of judgment: *State v. Hyde*, 22 Wash. 551, 61 Pac. 719.

An agreed statement of facts upon which a cause had been tried will not be stricken on appeal for want of the trial judge's certificate, when it is sufficiently identified by the court's findings and by the accompanying record: *Townsend Light Co. v. Hill*, 24 Wash. 469, 64 Pac. 778.

Where judgment on the pleadings has been rendered upon an answer of former adjudication, which was not traversed, the plaintiff cannot, on appeal, have the pleadings in the former case certified by the clerk to the supreme court, for considera-

tion by that court in passing upon the contention that the causes of action were different, when such pleadings had not been put in evidence in the trial court: *Bartlett v. Seehorn*, 25 Wash. 261, 65 Pac. 185.

Where the trial judge refuses to certify to a statement of facts stipulated by the parties to an appeal, but prepares and certifies a different statement of the facts, with his certificate attached that it is a true and correct statement of the matters and proceedings had at the trial, the supreme court can consider only the statement so certified: *State v. Maines*, 26 Wash. 160, 66 Pac. 431.

Although there may be affidavits in the record on appeal, which had apparently been treated on the trial as evidence, yet the supreme court will not inquire into the correctness of the court's findings, where there is no statement of facts, and it does not appear that the affidavits constituted all the evidence upon which the findings were based: *Zindorf Con. Co. v. Western Am. Co.*, 27 Wash. 31, 67 Pac. 374.

Where a proposed statement of facts, although not containing all the evidence in an equitable cause, is filed by the appellant, and no proposed amendments are filed and served by the respondent, such proposed statement becomes for all purposes an agreed statement of facts, and, under such circumstances, is conclusive on the parties on appeal, when the trial judge certifies that it contains all the material facts: *Powell v. Nolan*, 27 Wash. 318, 67 Pac. 712.

Where a statement of facts proposed by appellant and an amended statement proposed by respondent, are certified by the trial court as together containing the matters and proceedings occurring in the cause, the supreme court will treat the combined statements as constituting properly a part of the record, especially when no objection was made in the court below against both proposed statements being made a part of the record: *Herman v. Great Northern R. R. Co.*, 27 Wash. 472, 68 Pac. 82.

Where a motion for continuance and an affidavit supporting it were filed as one paper, and the order of the court denying the motion expressly recites that the court had read the affidavit presented in support of the motion, the journal entry of the order would make the affidavit a part of the record, without the necessity of incorporating it by means of a bill of exceptions or a statement of facts: *State v. Vance*, 29 Wash. 435, 70 Pac. 34.

A written verified challenge to the panel of jurors, served upon the adverse party and filed in court, is properly a part of the transcript on appeal, without the necessity of being incorporated therein by

bill of exceptions or statement of facts: *Id.*

The fact that a statement of facts does not include certain exhibits and depositions introduced in evidence, which omission is apparent on the face of the record, is not ground for striking the statement, when it appears from the judge's certificate that the facts included are "such thereof as the parties have agreed to be all that are material": *Nickeus v. Lewis County*, 23 Wash. 125, 62 Pac. 63.

The fact that a statement of facts was settled and certified by the judge who presided at the trial after his term of office had expired would not be ground for striking the statement, where it was subsequently settled and certified within the statutory time by the judge of the court: *Anderson v. Trust Co.*, 26 Wash. 192, 66 Pac. 415.

Affidavits in support of a motion for a new trial will not be considered on appeal, when not embodied in a bill of exceptions or a statement of facts: *Holmeas v. Shuey*, 27 Wash. 489, 67 Pac. 1096.

Where an appeal was taken from an order overruling a demurrer to a complaint, and subsequent to the overruling of the demurrer an amended complaint was filed by plaintiff, the supreme court will not review the allegations of such amended complaint, although brought up by supplemental record: *Smith v. Lamping*, 27 Wash. 624, 68 Pac. 195.

Where a judgment of nonsuit recites that it is based upon the pleadings and on the opening statement of counsel for plaintiffs, an appeal will be dismissed where the record does not contain such opening statement, for the reason that, because of its absence, the supreme court would be unable to pass intelligently upon the error alleged in granting the nonsuit: *Johnson v. Spokane*, 29 Wash. 730, 70 Pac. 122.

The superior court cannot be compelled to certify a statement of facts covering that part of a case which occurred more than ninety days prior to the date of the filing of the statement, inasmuch as the utmost limit of time within which a statement can be filed is ninety days after the time begins to run within which an appeal may be taken: *State v. Superior Court*, 30 Wash. 43, 70 Pac. 102.

On appeal from an order overruling a motion to vacate a judgment, affidavits in support thereof will not be considered, when not incorporated in the record by bill of exceptions or statement of facts: *Chevalier v. Wilson*, 30 Wash. 227, 70 Pac. 487.

The fact that the order of the court in overruling a motion to vacate a judgment recites that the court has examined the affidavits and briefs furnished by the

respective parties and duly considered the same, is not a sufficient identification of affidavits submitted for consideration on appeal, nor does it appear from such recital that the affidavits brought up were all the affidavits presented to the lower court and upon which it based its decision: *Id.*

The dissolution of attachments against a corporation and the appointment of a receiver therefor on the ground of its insolvency and that its assets should be treated as a trust fund for all creditors, will not be disturbed on appeal, when the answer denying the insolvency had not been filed at the time of hearing upon the motion for dissolution and the record contains no statement of facts or bill of exceptions showing what evidence was before the court: *Washington Liquor Co. v. Alladio Cafe Co.*, 28 Wash. 176, 68 Pac. 444.

Where appellants bring up a record on appeal they cannot contradict it in the supreme court by affidavits: *Id.*

The fact that a statement of facts was certified by one of the judges of the superior court, while the action was tried by such judge as a judge pro tempore, before he succeeded to the office, would not be ground for striking the statement, since it fully meets the requirement of having been certified by the judge who tried the cause: *Gratton & Knight Mfg. Co. v. Redelsheimer*, 28 Wash. 370, 68 Pac. 879.

Where no formal findings of fact and conclusions of law were made by the trial court, the exception of plaintiff to a dismissal of her action, and to the judgment reciting that she had not sustained the allegations of her complaint, sufficiently pointed out the claim of errors for the purpose of review on appeal: *McAllister v. McAllister*, 28 Wash. 613, 69 Pac. 119.

Filing record—Time for.—Under Laws 1893, page 126, section 14, it is not ground for dismissal that the same were filed in the supreme court a few days prior to the expiration of the prescribed four months, although the time allowed respondent for filing his answering brief had not yet expired: *Maxwell v. Griffith*, 20 Wash. 403, 55 Pac. 571.

A plaintiff is excusable for not having the record on appeal transmitted to the supreme court within four months after judgment, when it appears that the trial court did not sign and settle the statement of facts filed by him for a period of sixty days, that the court extended the time for serving appellant's brief for a period of ninety days, that by a rule of the superior court it is made the duty of the clerk to not forward the statement of facts to the supreme court until the time for filing respondent's brief has elapsed, and that the whole record had been trans-

mitted prior to the expiration of the extension of time granted by the trial court: *Richardson v. Spangle*, 22 Wash. 14, 60 Pac. 64.

Where an appellant transmitted his transcript on appeal, together with the briefs of both parties, to the clerk of the supreme court, but failed to transmit the docket fee in time for the assignment of the cause for hearing at the next term, the court is warranted in imposing a penalty in a reasonable sum, payable to the opposing party, as a condition for not dismissing the appeal on account of appellant's negligence in its prosecution: *Griffith v. Maxwell*, 22 Wash. 634, 61 Pac. 708.

Where an appeal had been filed within the time prescribed by statute, but had not been marked filed by the clerk till after the expiration of the prescribed time,

because the filing fee had not been paid through misapprehension on the part of appellant's counsel, the appeal should not be dismissed, as it shows a substantial compliance with the statute: *First National Bank v. Hatfield*, 20 Wash. 224, 54 Pac. 1135.

Under Laws 1901, page 29, section 2, which provides that the transcript on appeal shall be prepared, certified and filed in the office of the clerk, at or before the time when the appellant serves and files his opening brief, the failure of the appellant to have such transcript filed before serving and filing his brief will, on motion of respondent, subject him to the imposition of terms in order to entitle him to the further prosecution of his appeal: *Prescott v. Bridge Co.*, 30 Wash. 158, 70 Pac. 252.

§ 6514. Filing and Serving Briefs.

Within ninety days after an appeal shall have been taken by notice as provided in this title, the appellant shall serve on the respondent three copies and shall file with the clerk of the superior court fifteen copies, together with proof or written admission of service, as aforesaid, of a printed brief on the appeal upon his part, which brief shall clearly point out each error that the appellant relies on for a reversal, and shall conform to such regulations of its contents in other respects, and its form and size, as the supreme court by its rules may have prescribed. Within thirty days after the service of the appellant's brief, the respondent shall likewise serve and file with the clerk of the superior court, with like proof of service, the like number of copies of a printed brief on the appeal upon his part which shall likewise conform to the rules of the supreme court. Not less than ten days prior to the hearing the appellant may also serve and file either with the clerk of the superior court or in the supreme court like printed brief or briefs, strictly in reply to respondent's brief. The time for service and filing of briefs, as in this section prescribed, may be extended by order of the superior court for good cause shown, or by stipulation of the parties concerned; and if the time for filing any statement of facts shall be extended by order or stipulation, the time herein prescribed for serving and filing the appellant's opening brief shall thereby be correspondingly extended. Either party may after the filing of his briefs and not less than one day prior to the hearing of the appeal submit to the supreme court and to the adverse party a written or printed statement of any additional authorities, with suitable comment thereon strictly in support of the position taken in his brief hereinabove required to be filed. But the appellant shall not be permitted to urge in any such reply brief or statement of additional authorities, or on the hearing, any grounds for reversal not clearly pointed out in his original brief. [Amendment, approved Feb. 28, 1901; L. 1901, p. 30.]

§ 6514. Filing briefs—Rules governing. An appeal will be dismissed for failure of appellant to file his brief within the stat-

utory time, when his only excuse is that he had been unable to get the brief out and printed within ninety days after ser-

vice of appeal, owing to other business which demanded the attention of appellant's counsel: *Ambrose v. Gwinnup*, 16 Wash. 333, 47 Pac. 737.

Failure of appellant in a criminal case to file his brief within the required time is excusable, when the counsel who appeared for him had removed from the state, and appellant, who was confined in jail, procured the brief to be filed as soon as he learned of the omission: *State v. Williams*, 18 Wash. 47, 63 Am. St. Rep. 869, 50 Pac. 580.

An extension of time given appellant by stipulation, in which to file his brief, would not excuse respondent from filing his answering brief within the time prescribed by the rules of court, unless an extension of time had also been accorded the latter by stipulation: *Carlson Bros. & Co. v. Van De Vanter*, 19 Wash. 32, 52 Pac. 323.

A brief filed irregularly and out of time by one not an attorney of record in the case will be stricken from the files: *Anderson v. Northern Pacific Railway Co.*, 19 Wash. 340, 53 Pac. 345.

An appeal will not be dismissed on the ground that appellant had filed his brief before filing his transcript, contrary to the provisions of Laws 1901, page 29, section 2, which requires the transcript to be certified and filed at or before the serving and filing of appellant's opening brief, where the motion is not made until after the record has been supplied: *Raymond v. Bales*, 26 Wash. 493, 67 Pac. 269.

Although appellant's brief has not been filed within the time limited, the appeal will not be dismissed, where filing was made prior to respondent's motion to dismiss, and there is no showing that respondent was injured by the delay: *Griffiths v. Maxwell*, 20 Wash. 403, 55 Pac. 571.

The action of the lower court in granting an extension of time for the filing and serving of briefs on appeal, beyond the period prescribed by law, will not be disturbed: *National Christian Assn. v. Simpson*, 21 Wash. 16, 56 Pac. 844.

Where an appellant to whom no extension of time has been granted neglects to serve and file his brief in the cause within ninety days after filing his notice of appeal, his appeal will be dismissed upon the motion of an adverse party: *In re Sullivan's Estate*, 25 Wash. 430, 65 Pac. 793.

Form and substance of briefs.—Reference in a brief to the pages of the transcript, as required by the court rules, is not necessary, when the case was disposed of upon a motion to strike portions of the complaint, and upon a demurrer to the complaint, and the brief contains the sub-

stance of both: *Sligh v. Shelton*, 20 Wash. 16, 54 Pac. 763.

The rule of court requiring briefs to refer to the pages of the transcript for verification will not be rigidly enforced, when the transcript is short and the only error assigned is directed to the order of the court sustaining a demurrer to the complaint: *Hyatt v. Lewis*, 20 Wash. 303, 55 Pac. 217.

Failure to comply literally with the requirements of rule 8 of the supreme court, which provides that briefs shall contain a clear statement of the case, as far as deemed material, with references to the pages of the transcript for verification, and shall include the findings of fact made by the court, with the exceptions thereto, on which any question is sought to be raised on appeal, is not ground for striking the brief, when such requirements have been substantially complied with by the appellant: *Dunsmuir v. Port Angeles Gas etc. Co.*, 24 Wash. 104, 63 Pac. 1095.

The supreme court rule which requires findings of fact to be printed in the appellant's brief applies only to cases where the findings themselves are contested, not to cases where the error assigned is as to the conclusions of law drawn from findings which are accepted as correct: *In re Seattle*, 26 Wash. 602, 67 Pac. 250.

When the appellant has failed to comply with supreme court rule 8, which requires the findings of fact, with the exceptions thereto, to be printed in his brief, and has failed to correct the omission or offer sufficient excuse therefor, the court will not examine the evidence to learn whether it supports the findings: *Loan Assn. v. Benson*, 28 Wash. 578, 68 Pac. 1038.

The failure of appellant to comply with the requirements of rule 8 of the supreme court respecting the contents of briefs may be cured by the filing of new briefs fully complying therewith: *Gratton & Knight Mfg. Co. v. Redelsheimer*, 28 Wash. 371, 68 Pac. 879.

Rule 8 of the supreme court, which requires findings of fact and conclusions of law to be printed in the appellant's brief, does not contemplate the printing of such findings and conclusions when no question is sought to be raised thereon. Where appellant states in his brief the essential facts of the case, although not at the beginning, and makes reference to the place in the record where they can be found, it is a sufficient compliance with rule 8 of the supreme court, which provides that "briefs shall contain a clear statement of the case, so far as deemed material by the party, with reference to the pages of the transcript for verification": *Drumheller v. Am. Surety Co.*, 30 Wash. 530, 71 Pac. 25.

When findings of fact questioned by appellant are not printed in his brief, the sufficiency of the findings with reference to the testimony will not be considered by the court: *Lewis v. McDougall*, 19 Wash. 388, 53 Pac. 664.

Assignments of error.—Where the only question sought to be raised by appellant is upon the sufficiency of the complaint to sustain the judgment, the allegation set forth in his brief that the complaint does not state a cause of action constitutes a sufficient assignment of error: *Rhode Island Mortgage etc. Co. v. Spokane*, 19 Wash. 616, 53 Pac. 1104.

Exception to a finding will be disregarded on appeal where it is not referred to in the assignments of error, and where the argument in the brief, which does not refer to the record for verification, is in no wise directed to it: *Murphy v. Currie*, 21 Wash. 232, 57 Pac. 795.

Errors not assigned in the brief will not be considered: *Sengfelder v. Hill*, 21 Wash. 371, 58 Pac. 250.

An assignment of errors in appellant's brief, that the lower court erred in giving and in refusing certain instructions, is sufficient, without assigning as error that the lower court denied a motion for a new trial based on the errors alleged: *Carter v. Seattle*, 21 Wash. 585, 59 Pac. 500.

An assignment of errors is sufficient when there can be gathered therefrom the points upon which the appellant relies for a reversal: *Ranahan v. Gibbons*, 23 Wash. 255, 62 Pac. 773.

Errors of the lower court will not be considered on appeal unless the appellant's brief clearly points them out as grounds for reversal: *Ogle v. Jones*, 16 Wash. 319, 47 Pac. 747.

Where the appellant merely assigns as error the ruling of the court in sustaining a demurrer, but fails to suggest any reason why the ruling is erroneous, the assignment will be disregarded by the supreme court: *Loan Assn. v. Benson*, 28 Wash. 578, 68 Pac. 1038.

A motion to dismiss an appeal for want of an assignment of error is without merit, where the appellant's brief expressly assigns as error the order sustaining defendant's demurrer to his petition and dismissing the petition, with costs to defendant: *State v. Reed*, 29 Wash. 383, 69 Pac. 1096.

Although appellant may not have specifically assigned the errors relied on for reversal in his brief, as required by statute and rule of court, the court will not strike the brief and affirm the judgment, when it has been able to discover therefrom the errors relied on: *Crowley v. McDonough*, 30 Wash. 57, 70 Pac. 261.

Striking briefs from files.—A failure of appellant to conform with the supreme

court rule as to dimensions of briefs is ground for striking his briefs, when his reply brief is as objectionable as his opening brief, though his attention was called to the matter by respondent, and no excuse is offered for the violation of the rule: *Von Schrader v. Welcher*, 19 Wash. 349, 53 Pac. 368.

Appellant's brief will be stricken from the files, when it fails to comply with the supreme court rule requiring references therein to the pages of the record for verification, except in cases where the record is not very extensive: *Washington Mill Co. v. Sprague Lumber Co.*, 19 Wash. 165, 52 Pac. 1067.

A motion to strike appellants' brief, because the latter had not caused the clerk of the lower court to prepare or certify a transcript of the record on appeal at the time the briefs of the parties were prepared, will be denied, where the respondent did not move against the record on that ground, or make any attempt to procure its preparation at an earlier date, and there is no showing that injury resulted therefrom: *Maxwell v. Griffith*, 20 Wash. 106, 54 Pac. 938.

§ 6515. Jurisdiction — Pending appeal. Where an appeal has been taken from an order of the court modifying a divorce decree so as to award the custody of the minor child to the mother, and the appeal is pending undisposed of, the fact of such appeal may be set up by plea in abatement in a subsequent action by the father in which he seeks to have the custody of the child awarded to him: *Irving v. Irving*, 26 Wash. 122, 66 Pac. 123.

Although a decree disposing of the custody of a minor child does not have the force of *res judicata* but is subject to modification whenever the interests of the child demand it, yet where an appeal has been taken to the supreme court, that court alone possesses the sole power to make orders with reference to the custody of the child, and applications therefor should be addressed to that court when changed conditions require a change during the pendency of the appeal: *Id.*

After an appeal has been perfected from an erroneous judgment, jurisdiction over the cause passes to the supreme court, and it is too late for the respondent to cure errors in the judgment by moving for its vacation: *Loan & Trust Co. v. Murray*, 20 Wash. 656, 56 Pac. 368.

Where judgment was erroneously entered by default, while defendants' demurrer stood undisposed of, a motion to vacate the judgment subsequent to appeal therefrom would not occasion a cessation of defendants' rights involved in the appeal: *Id.*

§ 6517. Dismissal of—Grounds for—Cessation of controversy.—Where, pending an

appeal by plaintiff in an action of quo warranto to oust a defendant from office, the defendant is legally appointed and confirmed in the office, the appeal should be dismissed: *State v. Wickersham*, 16 Wash. 161, 47 Pac. 421.

The failure of appellants to object to the action of their codefendants, in receiving money tendered by plaintiffs pursuant to the decree of the court, will not estop them from prosecuting their appeal, when the payment and acceptance of said money does not put an end to the controversy between the parties to the appeal: *Utterback v. Meeker*, 16 Wash. 185, 47 Pac. 428.

Where the only question involved upon an appeal in a proceeding in quo warranto is as to which of two boards of trustees and sets of officers were the rightful officers of a corporation, the term of office having expired prior to the appeal, the appeal will be dismissed: *State v. Prosser*, 16 Wash. 608, 48 Pac. 262.

An appeal should be dismissed when the real controversy between the parties has ceased, as the appellate court will not hear and determine abstract questions of law, nor permit a mere question of costs to be litigated before it: *State v. Meacham*, 17 Wash. 429, 50 Pac. 52.

Where an appellant has duly perfected and is engaged in prosecuting his appeal, the fact that a distribution of funds ordered by the judgment appealed from has been made and the portion allotted appellant has been received by him, does not amount to a waiver of his appeal: *Thompson v. Sines*, 18 Wash. 359, 51 Pac. 474.

Where, pending an appeal from an order quashing a writ of review, which had been sued out by one removed from the office of director of a public institution, the officer is reinstated in office, the appeal will be dismissed on the ground of cessation of the controversy: *Watson v. Merkle*, 21 Wash. 635, 59 Pac. 484.

Where defendant has deposited money in court to make good a tender, and the court, without the consent of defendant, has applied such money pro tanto upon a judgment recovered for a greater sum, the acceptance of such money by plaintiff does not operate as a satisfaction of the judgment, and as depriving defendant of a right of appeal on the ground of a cessation of the controversy: *Duggin v. Smith*, 27 Wash. 702, 68 Pac. 356.

An appeal will not be dismissed on the ground of a cessation of the controversy, where the record merely shows that the controversy could have ceased, not that it has actually done so: *Canning Co. v. Sims*, 29 Wash. 389, 70 Pac. 1003.

Where the term of office has expired which was involved in a contest over the right thereto, an appeal from the judgment in the cause will be dismissed, on the ground of there being no subject matter on which the judgment of the supreme court can operate: *State v. Cummings*, 27 Wash. 316, 67 Pac. 565.

Where a subscriber for a telephone obtained a peremptory writ of mandate compelling the telephone company to publish a directory containing his name within a given time, prior to its regular date of publication, from which order the company, instead of complying, took an appeal and filed a supersedeas bond, but, pending the appeal, printed a directory containing respondent's name in the regular course of its business, shortly after the date fixed in the writ of mandate, the respondent is not entitled to a dismissal of the appeal on the ground of a cessation of the controversy, since the act of the appellant was not done in compliance with the order, but in accordance with its regular custom of periodically publishing such a directory: *State ex rel. v. Sunset Tel. etc. Co.*, 30 Wash. 676, 69 Pac. 12, 71 Pac. 198.

Where the officers of a city against whom a peremptory writ of mandate had issued, requiring them to issue liquor licenses to plaintiffs, comply with such order after taking an appeal therefrom, it amounts to a voluntary satisfaction of the judgment, inasmuch as the appeal itself, under Ballinger's Code, section 6505, operated as a stay of execution, without the requirement of a bond from the city; and hence respondents are entitled to a dismissal of the appeal on the ground of a cessation of the controversy: *Campbell v. Hall*, 28 Wash. 626.

Appeal not in time.—A general motion to dismiss an appeal from both the judgment in a cause and from an order refusing to vacate the judgment, on the ground that the appeal was not taken in time, will be denied, when there is no question as to the appeal from the order being within due time: *In re Lamona's Estate*, 29 Wash. 394, 69 Pac. 1093.

An appeal will be dismissed on the ground that no final judgment had been entered in the cause, when the record on appeal does not contain either the verdict or the judgment: *Buckley v. Conley*, 16 Wash. 338, 47 Pac. 735.

Want of exceptions.—The fact that a judgment was rendered upon findings of fact and conclusions of law, and that appellant took no exceptions thereto, would not be ground for dismissal of the appeal, where the errors assigned arose upon the pleadings: *Hathaway v. McDonald*, 27 Wash. 659, 91 Am. St. Rep. 889, 68 Pac. 376.

Failure of surety company to procure license.—An appeal will be dismissed where the surety upon the bond is a surety com-

pany which has failed to comply with the law requiring such companies to procure a license from the state insurance company authorizing it to do business in this state: *Dodge v. Corliss*, 27 Wash. 685, 68 Pac. 177.

Failure to file transcript in time.—An

appeal will not be dismissed because of appellant's failure to file a transcript of the record at or before the time he served and filed his opening brief, where the motion to dismiss is not made until after the record is supplied: *Johnson v. Fish Co.*, 30 Wash. 162, 70 Pac. 254.

§ 6518. Hearing and Dispositions of Motions.

If the supreme court on the hearing of any such motion or motions shall find the grounds or any thereof alleged, for the same, to be well taken and true in effect, the court may grant the same in whole or in part, but when any such motion does not go to the substance of the appeal, or to the right of appeal, and the court shall be of the opinion that the moving party can be compensated in costs, or by the imposition of other terms for any delay of the appellant which is made the ground of any such motion (except a failure to take the appeal within the time limited by law) the court, in its discretion, may deny the motion on such terms as may be just. The court shall upon like terms allow all amendments in matters of form, curative of defects in proceedings to the end that substantial justice be secured to the parties, and no appeal shall be dismissed for any informality or defect in the notice of appeal, the appeal bond, or the service of either thereof, or for any defect of parties to the appeal if the appellant shall forthwith, upon order of the supreme court, perfect the appeal. [Amendment, approved Mar. 8, 1899; L. 1899, p. 79.]

§ 6518. Appeal—Motions, disposition of. Under Ballinger's Code, section 6518, providing that no appeal shall be dismissed for any defect in the service of notice of appeal, if it appears that the adverse party had sufficient notice so as not to prejudice his substantial rights, the giving of notice to an attorney for a respondent is sufficient to excuse the omission of notice to him as attorney for himself, as he cannot in the latter capacity maintain that he has had no notice. Failure to serve respondents with an appeal bond or notice of its filing is not ground for dismissal of the appeal, under the provisions of the appeal act of 1893. The supreme court will not entertain a motion to strike exceptions to findings of fact and conclusions of law, on the ground that they were not taken within the time prescribed by law: *Home Savings etc. Assn. v. Burton*, 20 Wash. 688, 56 Pac. 940.

A motion to dismiss an appeal for want of jurisdiction will be entertained even upon an oral suggestion at the time of trial: *Hall v. Skavdale*, 21 Wash. 203, 57 Pac. 807.

An appeal will be dismissed where all the parties who appeared in the case below and against whom judgment was taken did not join in the appeal, or were not served with notice of appeal. An appeal will be dismissed where the sureties upon the bond, which purports to be both a

stay bond and an appeal bond, are the parties against whom the judgment was entered; and the fact that they constitute a surety company does not distinguish them from any of the other judgment debtors: *Smith v. Beard*, 21 Wash. 204, 57 Pac. 796.

When the only error urged upon appeal is that the findings of fact do not sustain the conclusions of law, neither exceptions to the findings nor a statement of facts is necessary: *Brown v. Kern*, 21 Wash. 211, 57 Pac. 798.

Where it appears on the face of the records that the appellant had an appealable interest in the controversy at the time the judgment appealed from was entered against him, the appeal will not be dismissed because a contingency could happen which would determine the controversy, since the presumption is that appellant's interest continues until his rights are finally determined; and this presumption can be overcome only by an affirmative showing, appearing either upon the face of the record or by extrinsic evidence, that such interest has ceased to exist: *Wood v. Seattle*, 23 Wash. 1, 62 Pac. 135.

A motion to dismiss an appeal for failure to send up the record in time will not be entertained, when the motion is not made until after the record has been

filed: *McNamara v. Crystal Mining Co.*, 23 Wash. 26, 62 Pac. 81.

An appeal from an order sustaining a demurrer to a cross-complaint which seeks to enjoin one of the parties thereto from prosecuting another action involving the same subject matter should be dismissed on the ground of cessation of the controversy, where it appears that, prior to the sustaining of the demurrer, the two actions had been consolidated and would be tried as one cause: *Sether v. Clark*, 24 Wash. 16, 63 Pac. 1106.

An appeal will not be dismissed merely for delay in serving and filing briefs or in the transmission of the record to the supreme court within the time limited by law, when there is no showing of prejudice to respondents by reason of the delay: *Gay v. New Whatcom*, 26 Wash. 389, 67 Pac. 88.

A motion to dismiss an appeal for want of service of notice upon one of the parties to the action is premature, where the appellant has not brought up his record on appeal and his time therefor has not expired, since the question of whether due notice of appeal has been given to all the parties entitled thereto can be determined only by an inspection of the record: *Bank v. Hardware Co.*, 30 Wash. 127, 70 Pac. 251.

The insufficiency of appellant's exceptions to findings of fact would not entitle respondent to an affirmance of the judgment, since the question of whether the conclusions of law legitimately flow from the findings of fact always remains open for investigation: *Robins v. Paulson*, 30 Wash. 459, 70 Pac. 1113.

Where an appeal is dismissed upon the motion of appellant, the respondent is entitled to an affirmance of the judgment of the lower court, when the time limited by law within which another appeal may be taken from the same judgment has already expired: *Post v. Spokane*, 28 Wash. 701, 69 Pac. 371.

Under Laws 1899, page 29, which provides that on the hearing of a motion to dismiss an appeal the supreme court may allow all amendments in matters of form, and that no appeal shall be dismissed for any informality or defect in the appeal bond, etc., if the appellant shall forthwith, upon order of the court, perfect the appeal, an appeal will not be dismissed because the bond, while purporting on its face to be made by the appellants and a surety as a joint and several obligation, was signed by the surety alone, but the appellants will be permitted to complete its execution by signing it at the time of the hearing of the motion for dismissal: *Bloomington v. Weil*, 29 Wash. 611, 70 Pac. 94.

§ 6520. What may be reviewed.—An objection that the answer in an action sets up inconsistent defenses comes too late, when urged for the first time on appeal: *Tibbals v. Mount Olympus Water Co.*, 16 Wash. 480, 48 Pac. 236.

Where the excessiveness of a judgment has not been called to the attention of the lower court on motion for new trial, it will not be considered on appeal: *Harris v. Van De Vanter*, 17 Wash. 490, 50 Pac. 50.

The objections that an information does not substantially conform to the requirements of the code, and that it charges more than one crime in more than one form, cannot be raised for the first time on appeal: *State v. Rogan*, 18 Wash. 44, 50 Pac. 582.

Objection to the form of a verdict cannot be raised on appeal, when the error has not been called to the attention of the lower court, so as to afford an opportunity to correct it there: *McClellan v. Gaston*, 18 Wash. 472, 51 Pac. 1054.

The supreme court will not consider and determine the right of a party to an allowance for costs incurred in the lower court, when the lower court has never been called upon to pass upon the question: *Jenkins v. Powe*, 19 Wash. 113, 52 Pac. 520.

An objection that the pleadings do not show that a tender was kept good cannot be raised for the first time on appeal: *Moran Bros. Co. v. Northern Pacific R. R. Co.*, 19 Wash. 266, 53 Pac. 49, 1101.

In an action on a bond to recover liquidated damages, an answer denying the execution of the bond, and also admitting its execution as a bond fixing a penalty instead of liquidated damages, cannot be attacked on appeal, when no objection has been raised on that ground in the lower court: *Roberts v. Washington Water Power Co.*, 19 Wash. 392, 53 Pac. 664.

Alleged errors in instructions as to evidence will not be considered on appeal, in the absence of a statement of facts. The action of the trial court in overruling an application for continuance will not be considered on appeal, in the absence of a statement of facts: *State v. Johnny Tommy*, 19 Wash. 270, 53 Pac. 157.

Affidavits introduced in the lower court will not be considered on appeal unless included in the statement of facts by certificate of the trial judge: *Norfor v. Busby*, 19 Wash. 450, 53 Pac. 715.

Affidavits submitted to the trial court in support of a motion for a new trial will not be considered on appeal, when not incorporated in a bill of exceptions or statement of facts. The objection that there is nothing on the face of the record

justifying a prosecution by information, rather than by indictment, should be raised before entering plea of not guilty. The fact that demonstrations of approval at the close of the argument for the prosecution were made by persons present cannot be treated as prejudicial error, when there is no showing as to what the demonstrations were nor that the court had been requested to take any action thereon. Error in the giving and refusing of instructions must be excepted to, in order to secure a review on appeal: *State v. Anderson*, 20 Wash. 193, 55 Pac. 39.

Rulings upon demurrers may be reviewed upon the transcript on appeal, without incorporating in the record any statement of facts or the findings and conclusions of the lower court: *Chase National Bank v. Hastings*, 20 Wash. 433, 55 Pac. 574.

The action of the court in sustaining a demurrer is reviewable upon appeal, when excepted to, although no exceptions have been made to the findings of fact and conclusions of law by the court: *Arey v. Arey*, 22 Wash. 261, 60 Pac. 724.

The action of the court in sustaining a demurrer is reviewable upon appeal, when excepted to, although no exceptions have been made to the findings of fact and conclusions of law by the court: *Id.*

The action of the court in refusing to strike out certain allegations of a complaint as irrelevant and redundant matter is not prejudicial error, when there is no showing that it in any way involved the merits of the controversy, or materially affected the judgment rendered: *State v. Lorenz*, 22 Wash. 289, 60 Pac. 644.

In cases tried by the lower court without a jury, where exceptions to the findings and conclusions have been duly taken and the facts have been brought to the supreme court by a certified bill of exceptions or statement of facts, it is the province of the supreme court to examine the facts de novo and determine the case by the record, and hence, in cases of conflicting testimony, the findings of the trial court are not as conclusive as the verdict of a jury, although there may be substantial testimony supporting them: *Furth v. Baxter*, 24 Wash. 608, 64 Pac. 798.

The discretion reposed in trial courts, in the matter of punishing for contempt the refusal to obey their judgments, even though they may be irregular or void in part, will not be interfered with by appellate courts, unless it plainly appears that such discretion has been abused: *State ex rel. Sander v. Jones*, 20 Wash. 576, 56 Pac. 369.

The action of the superior court in granting a new trial will not be reviewed on appeal, when the record does not disclose the grounds upon which the action

of the court was based: *Bender v. Rinker*, 21 Wash. 636, 59 Pac. 504.

Although the evidence may be conflicting, the findings of the trial court will not be allowed to control, when they are opposed by a clear preponderance of the evidence, or where the overwhelming weight of the evidence is in favor of the appellant: *Ranahan v. Gibbons*, 23 Wash. 255, 62 Pac. 773.

The evidence upon which findings of fact were based will not be reviewed upon appeal, where the exception taken to the findings is a general one, applying to all of them, instead of particularly specifying the ones which are erroneous: *Payette v. Willis*, 23 Wash. 300, 63 Pac. 254.

Appellant is entitled to a reversal of a cause of equitable cognizance, and a new trial in the court below, when he seeks such relief instead of a trial de novo, where the record as transmitted to the supreme court clearly shows that the judgment entered was not justified by the evidence as certified by the trial judge, and when the record raises a doubt as to whether the statement of facts contains all of the evidence upon which the cause was tried in the court below: *Vermont Loan & Trust Co. v. Vaughn*, 25 Wash. 219, 65 Pac. 188.

Alleged error of the trial court in overruling a motion for a new trial will not be considered on appeal, where there is no statement of facts in the record: *Nelson v. Seattle Trac. Co.*, 25 Wash. 602, 66 Pac. 61.

Alleged errors of the trial court will not be reviewed on appeal, where the questions raised are not sufficiently presented in the record: *Griffith v. Maxwell*, 25 Wash. 658, 66 Pac. 106.

Judgment by default for not answering within the time prescribed by rules of court after the overruling of a demurrer to the complaint will not be disturbed on appeal, when there is nothing in the record showing that defendant was entitled to an extension of time for answering: *Ferguson v. Hoshi*, 25 Wash. 664, 66 Pac. 105.

In the absence of a statement of facts or bill of exceptions showing the circumstances under which a judgment was rendered, the supreme court will not review the action of the trial court in entering judgment in excess of the verdict of a jury: *Carpenter v. Barry*, 26 Wash. 255, 66 Pac. 393.

When the facts as found by the court are not disputed, the only question is whether the judgment is authorized by the facts found, and this question is reviewable upon a general exception to the conclusions of law: *Woodhurst v. Cramer*, 29 Wash. 40, 69 Pac. 501.

Where two journal entries of a final judgment were entered under different titles, the second entry being made to correct some inadvertence in the first, but without ordering its cancellation, and appeal was taken from both judgments, the supreme court will, on reversing the judgment, direct a reversal on each appeal, in order to clear the record: *State v. Denham*, 30 Wash. 643, 71 Pac. 196.

Harmless error.—The failure of the court to reprimand a juror, who had asked the court if the defendant could not tell his story in his own way, without interruption of counsel, was not prejudicial error, when no exception or objection was taken to the juror's action, but counsel was permitted to continue his examination without any attention being given by court or counsel to the juror's question: *State v. Gates*, 28 Wash. 690, 69 Pac. 385.

The supreme court will not by its order attempt to direct the action of the superior court upon the rights of parties in regard to facts occurring subsequent to an appeal, and which the lower court has not had an opportunity, or been moved, to pass upon: *Hinchman v. Point Defiance Ry. Co.*, 17 Wash. 399, 49 Pac. 1061.

Where the testimony is conflicting, the verdict of the jury will not be disturbed unless there was error in the admission or rejection of testimony: *Mahrt Co. v. Hyman-Hall Co.*, 17 Wash. 415, 49 Pac. 1063.

In the absence of a cross-appeal, only the errors complained of by the appellant can be considered, and the court will not examine the record for the purpose of determining alleged errors or rulings of which the respondent complains: *Tacoma v. Light & Water Co.*, 16 Wash. 288, 47 Pac. 738.

Where there is sufficient testimony to warrant the verdict of a jury, it will not be disturbed on appeal, although the weight of testimony may appear to the court to be the other way. When an objection to the admission of testimony is once made clearly and distinctly, and the grounds of the objection are stated, it is not necessary that it should be repeated to every following question which falls within the objection: *Anderson v. White*, 18 Wash. 658, 52 Pac. 231.

The fact that the complaint in an action to set aside a transfer as fraudulent shows that defendant has sufficient other property to satisfy the demand against him is an immaterial error, when the court finds that the transfer was not fraudulent: *Allen v. Chambers*, 18 Wash. 341, 51 Pac. 478. See, also, *Smith v. Union Trunk Line*, 18 Wash. 351, 51 Pac. 400.

Where a verdict is clearly right under the evidence, error in giving or refusing

instructions is not prejudicial: *Kirkland Land etc. Co. v. Jones*, 18 Wash. 407, 51 Pac. 1043.

A judgment will not be reversed because of error in giving or refusing instructions when the verdict rendered is manifestly in accordance with the evidence: *Kellogg v. Cook*, 18 Wash. 516, 52 Pac. 233.

Rules of decision.—No error can be predicated upon the court's refusal to give a requested instruction, when the instruction given by the court covers all the joint points asked by defendant. The admission of rebuttal evidence is a matter largely in the discretion of the trial court, and its action in that regard will not be disturbed when it does not appear to be prejudicial to defendant: *State v. Klein*, 19 Wash. 368, 53 Pac. 364.

The findings of fact by a trial court, made in an action at law before it without a jury, will not be disturbed on appeal: *Ryan v. N. P. Ry. Co.*, 19 Wash. 533, 53 Pac. 824.

A conviction will be reversed where the court, without permission of the defendant, delivered to certain of the jurors letters and a newspaper addressed to them, although the letters were from a distance and had been in transit for several days, and the newspaper contained nothing relative to the cause on trial: *State v. McCormick*, 20 Wash. 94, 54 Pac. 764.

The amendment of pleadings, granting or refusing a continuance and submission of special interrogatories to the jury, are matters within the discretion of the trial court, whose action will not be disturbed in the absence of a showing of abuse: *Hart Lumber Co. v. Rucker*, 20 Wash. 383, 55 Pac. 320.

An order of the trial court overruling a motion for another trial upon issues raised by one of the defendants in a mortgage foreclosure suit will not be disturbed, when it appears that the court deemed the decree entered on the former trial a final one, in which the plaintiff had tacitly acquiesced for a period of ten months, and had perfected an appeal therefrom as a final decree: *Stubblefield v. McAuliff*, 20 Wash. 442, 55 Pac. 637.

A decree which coincides with, and is fully supported by, correct findings of fact, will not be set aside because the court has erred in some of its conclusions of law. Nor is an incorrect conclusion of law, unexcepted to, binding on the appellate court: *Gerhard v. Worrall*, 20 Wash. 492, 55 Pac. 625.

Where only a portion of the evidence is brought up on appeal, the presumption on the record is that the evidence was sufficient to justify the verdict. The discretion of the trial court in refusing a new

trial on the ground of newly discovered evidence will not be disturbed, when the affidavits for the motion are met by counter-affidavits: *State v. Webb*, 20 Wash. 500, 55 Pac. 935.

An affidavit charging contempt will be construed on appeal with every intentment in its favor, where no objection by demurrer or otherwise was interposed to its sufficiency in the lower court, and the testimony introduced on the hearing is not brought up in the record: *State v. Jones*, 20 Wash. 576, 56 Pac. 369.

Where the evidence is conflicting, the appellate court will not set aside the findings of the lower court, unless the weight of evidence is clearly to the contrary: *Knapp v. Crawford*, 16 Wash. 524, 48 Pac. 261.

Where it clearly appears from the evidence that no other verdict could have been rendered by the jury under the law, neither error in refusing requests for instructions, nor the giving of erroneous instructions, will be regarded as prejudicial. Errors not urged below cannot be raised for the first time on appeal: *Hardin v. Mullin*, 16 Wash. 647, 48 Pac. 349.

Rule of decision as to weight of evidence: *Selber v. Springbrook Trout Farm*, 19 Wash. 49, 52 Pac. 238; *Washington Dredging etc. Co. v. Partridge*, 19 Wash. 62, 52 Pac. 523.

The verdict of the jury will not be disturbed on appeal, where the evidence is substantially conflicting, and the lower court has declined to grant a new trial on the ground that the evidence does not justify the verdict: *McDougall v. Walling*, 19 Wash. 80, 52 Pac. 530.

In a prosecution of two defendants jointly, the failure of the court to instruct that a confession of one cannot be considered against his codefendant, is not error, when the state expressly disavowed in open court any application of the confession as against the one not joining in it and when there were instructions as to what must be found against each defendant to warrant a verdict against him: *State v. Johnny Tommy*, 19 Wash. 270, 53 Pac. 157.

The verdict of a jury finding that a deed absolute in form is in fact a mortgage will not be disturbed, when there is substantial testimony upon which to base the verdict: *Snyder v. Parker*, 19 Wash. 276, 67 Am. St. Rep. 726, 53 Pac. 59.

Waiver of error.—The defendant cannot raise the objection on appeal that the complaint fails to state a cause of action, when he has demurred on that ground in the lower court and subsequently waived his demurrer, answered and gone to trial upon the merits: *Hardin v. Mullen*, 16 Wash. 647, 48 Pac. 349.

§ 6521. Powers of supreme court on ap-

peal.—Where the supreme court cannot, owing to the state of the record before it, make an award affecting the property of the parties to a divorce suit, on reversing the decree of the lower court refusing a divorce, it will remand the case to the lower court for the purpose of hearing further testimony on the question of property, with instructions to make such provision for the wife and minor child as may seem meet and equitable: *McAllister v. McAllister*, 28 Wash. 614, 69 Pac. 119.

In case the judgment of the lower court may give rise to uncertainty as to its scope, the appellate court has jurisdiction, in order to avoid such uncertainty, to remand the case to the lower court for the purpose of having the judgment of that court made more specific: *Gose v. Blalock*, 21 Wash. 75, 57 Pac. 342.

§ 6522. **Damages on affirmance in appeals for delay.**—Damages will not be awarded without proof of the amount sustained: *Wheeler v. Com. Inv. Co.*, 22 Wash. 546, 61 Pac. 715.

§ 6523. **Judgment against sureties on appeal bond.** Upon the dismissal of an appeal for want of jurisdiction, judgment for costs will be rendered against the appellant, but not against the sureties upon the appeal bond: *Henry v. Great Northern Ry. Co.*, 16 Wash. 417, 47 Pac. 895.

An appeal from a portion only of a judgment by a party against whom no money judgment was rendered will not subject the appellant and the sureties on his appeal bond to liability, on affirmance of judgment, to pay the whole of the judgment: *Titlow v. Cascade Oat Meal Co.*, 16 Wash. 676, 47 Pac. 19.

Upon the dismissal of an appeal and affirmation of judgment, the supreme court will not give judgment against the appellant and his sureties upon a supersedeas bond for such an item as the rental of premises involved, when the extent of damages suffered by the respondent by reason of the supersedeas does not appear from the record: *N. W. etc. Bank v. Griffiths*, 18 Wash. 69, 50 Pac. 591.

Where it cannot be determined from the record what amount of damages respondent is entitled to recover for the detention of property pending an appeal, held by appellant by virtue of a supersedeas bond, no damages will be allowed in giving judgment against appellants, but the respondent will be left to an action upon the bond: *Blair v. Cassin*, 19 Wash. 127, 52 Pac. 1011.

The supreme court cannot award the damages sustained by respondent on account of the detention of his property pending an appeal, although a supersedeas bond has been given conditioned to pay all rents or damages to the property in controversy during the pendency of the

appeal, and out of which respondent should be kept by reason of the appeal; but respondent's remedy would be by action on the bond in the proper forum: *Carmack v. Drum*, 28 Wash. 472, 68 Pac. 894.

§ 6524. Remittitur may be recalled.—The supreme court has power to recall a remittitur, after its filing in the superior court, for the purpose of enforcing the judgment in accordance with the decision of the court: *Titlow v. Cascade Oat Meal Co.*, 16 Wash. 676, 47 Pac. 19.

A motion to correct the judgment of the supreme court may properly be made without first recalling the remittitur: *Id.*

§ 6525. Effect of judgment—Subsequent proceedings.—Where a judgment in favor of defendants in an action to cancel a tax deed has been reversed on appeal and remanded to the lower court with directions to enter judgment in favor of plaintiff, it is within the power of the lower court to ascertain the amount of taxes paid by defendants and decree it a lien on the land, although the judgment of neither the trial nor appellate court provide therefor, when the plaintiff had made a tender thereof, and asked that defendants be required to establish the amount paid by them: *Herrick v. Niesz*, 18 Wash. 132, 51 Pac. 346.

§ 6526. Mandate of reversal—Powers of trial court.—Upon a mandate from the supreme court reversing the judgment of the superior court upon an interlocutory order made in the foreclosure of a mortgage, as to the right of priority between secured and certain unsecured creditors, the superior court has power to vacate a decree of sale made by it pending the appeal, and direct other unsecured creditors, who had not been parties to the appeal, to file their claims to priority, if they assert any such claims: *State v. Superior Court of King County*, 17 Wash. 380, 49 Pac. 507.

Reversal, effect of on purchaser under decree reversed.—Where all the parties holding mortgages upon the property of a certain railway are before the court seeking foreclosure of their liens and a decree is rendered ordering sale of the entire property in solido and awarding priority to one of the mortgagees, a reversal of the decree, to the extent of adjudging that another mortgagee is entitled to an exclusive lien upon a portion of the property, would not affect the title of a purchaser under foreclosure sale: *Hinchman v. Point Defiance Ry. Co.*, 17 Wash. 399, 49 Pac. 1061.

Bona fide purchaser.—The title acquired by a judgment creditor upon the purchase by him of the debtor's real property at execution sale is subject to defeasance upon the subsequent reversal of the judgment, and a grantee of the judgment

creditor, though not a party to the action and in ignorance of the defect, does not occupy the position of an innocent purchaser in good faith, and consequently acquires no greater right by a conveyance from the judgment creditor than the latter had: *Singly v. Warren*, 18 Wash. 434, 63 Am. St. Rep. 896, 51 Pac. 1066.

§ 6528. Costs on appeal—Printing briefs.—Where two appeals are prosecuted in an action and the respondent in answering both files but one brief, it is not error upon affirmance as to one appeal and reversal as to the other, to tax the cost of the respondent's brief against the appellant whose judgment was affirmed, when the matters relating to the several appeals are intermingled in the brief and no request for a segregation of the cost has been made before judgment: *Commercial Nat. Bank v. Johnson*, 17 Wash. 264, 49 Pac. 488.

§ 6529. Criminal procedure—Appeal—Effect of.—A defendant who has been transported to the penitentiary and delivered to the warden under a judgment of conviction is entitled, where he gives notice of appeal subsequent to his imprisonment in the penitentiary, to be returned to the jail of the county in which he was convicted, and there detained, or released on bail, if the offense be bailable, pending the determination of his appeal: *In re Norris*, 26 Wash. 323, 67 Pac. 72.

An appeal from an order denying the writ of habeas corpus to a prisoner charged with the commission of a crime will not operate as a stay of proceedings on the criminal charge pending the determination on appeal of the habeas corpus proceedings: *State v. Fenton*, 30 Wash. 325, 70 Pac. 741.

§ 6535. To be heard on merits—Immaterial error disregarded.—The provisions of this section declared to apply to appeals in criminal cases in discussing the effect of a failure of the record to show plea to the indictment or information: *State v. Straub*, 16 Wash. 114, 47 Pac. 227.

A judgment in favor of plaintiff should be reversed on appeal where the burden is on him to establish an oral agreement by a clear preponderance of the evidence, and the evidence relating thereto is evenly balanced: *Ordway v. Downey*, 18 Wash. 412, 63 Am. St. Rep. 892, 51 Pac. 1047.

Alleged error in the court's refusing to admit evidence as to an extension of time of payment granted by an agent was harmless, when there was no showing that the agent was authorized to bind his principal in that particular: *Seattle Trust Co. v. Kerry*, 19 Wash. 389, 53 Pac. 665.

Under Ballinger's Code, section 6535, authorizing the supreme court on appeal to consider all amendments which could

have been made as made, that court will treat a pleading as amended whenever it is necessary to do justice between parties litigant, when it can be done without depriving either party of a substantial right: *Allend v. Spokane etc. Ry. Co.*, 21 Wash. 325, 58 Pac. 244.

Where a party to an action was entitled to amend her pleading to correspond to the proof, the supreme court will on appeal, under the provisions of Ballinger's Code, section 6535, consider the amendment as made: *Richardson v. Moore*, 30 Wash. 406, 71 Pac. 18.

The reopening of a case to allow the contestant of a will to introduce in evidence another will making her a residuary legatee, although the petition contesting the will did not show upon its face any interest of the petitioner in the property of deceased, was not prejudicial to the adverse party, where the will was already

on file in the case and the evidence could have been no surprise to him: *Id.*

An appellate court will not be justified in reversing a judgment where an error has been committed, if the record, as a whole, overcomes the presumption of prejudice which is established by the commission of error, and shows affirmatively that no substantial rights of the appellant have been injuriously affected: *Gray v. Washington Power Co.*, 30 Wash. 666, 71 Pac. 206.

In an action to enjoin the appropriation of land for a public use, although the complaint alleged ownership in fee and the proof showed less than a fee simple title, the complaint will on appeal be treated as amended to correspond to the proofs, where no objection was raised to the variance on the trial: *Olson v. Seattle*, 30 Wash. 687, 71 Pac. 201.

§ 6542a. Of Actions and Proceedings Before Justices and Magistrates—Venue.

All civil actions commenced in a justice court against a defendant or defendants residing in a city or town of more than three thousand inhabitants shall be brought in the justice court of the precinct in said city or town in which one or more of such defendants reside. [Act, approved Mar. 8, 1901; L. 1901, p. 105.]

The jurisdiction of justices of the peace in all civil actions, except as provided in the preceding section, shall be coextensive with the limits of the county in which they are elected or appointed, and no other or greater, but every justice of the peace shall continue to reside and perform all the duties of his office in the precinct for which he was elected or appointed during his continuance in office.

An emergency is hereby declared to exist and this act shall take effect immediately. [Act, approved Mar. 8, 1901; L. 1901, p. 105.]

§ 6546. Process—Style of.

All process issued by justices of the peace shall run in the name of the state of Washington, be dated the day issued and signed by the justice granting the same, and all executions and writs of attachment or of replevin shall be served by the sheriff or some constable of the county in which the justice resides, but a summons or notice and complaint may be served by any citizen of the state of Washington over the age of twenty-one years and not a party to the action. [Amendment, approved Feb. 26, 1903; L. 1903, p. 18.]

§ 6547. Return of Process.

Every constable or sheriff serving process or complaint and notice shall return in writing, the time, manner and place of service and indorse thereon the legal fees therefor and shall sign his name to such return, and any person other than one of said officers serving summons or complaint and notice shall file

with the justice his affidavit, stating the time, place and manner of the service of such summons or notice and complaint: Provided, That no fee shall be allowed for the service of a summons or notice and complaint by a person other than an officer. [Amendment, approved Feb. 26, 1903; L. 1903, p. 18.]

§ 6548. Service, by Whom Made—Return.

Any justice may, by appointment in writing, authorize any person other than the parties to the proceeding, or action, to serve any subpoena, summons, or notice and complaint issued by such justice; and any such person making such service shall return on such process or paper, in writing, the time and manner of service, and shall sign his name to such return, and be entitled to like fees for making such service as a sheriff or constable, and shall indorse his fees for service thereon: Provided, it shall not be lawful for any justice to issue process or papers to any person but a regularly qualified sheriff or constable, in any precinct where such officers reside, unless from sickness or some other cause said sheriff or constable is not able to serve the same: Provided, further, That it shall be lawful for notice and complaint or summons in a civil action in the justice court to be served by any person over the age of twenty-one years and not a party to the action in which the summons or notice and complaint shall be issued without previous appointment by the justice. [Amendment, approved Feb. 26, 1903; L. 1903, p. 19.]

[§ 6603, repealed by act of 1903; L. 1903, c. 64, p. 82, § 1.]

§ 6606. Garnishment in Justice's Court—Examination of Garnishee.

On the appearance of the garnishee before the justice, the affidavit aforesaid shall be deemed a sufficient complaint in this action, and the justice shall forthwith proceed to examine the said garnishee and his witnesses touching the matters alleged in the affidavit, and shall reduce the answers of said garnishee and his witnesses to writing, and file the same with the papers in the case; such examination may be adjourned by said garnishee as in case of adjournment in justice court in civil actions: Provided, That in lieu of the personal appearance of the garnishee and his examination by the justice, the garnishee may answer the affidavit and writ, in writing, in which case the answer shall be in writing, signed and verified by the garnishee, and make true answer to the several matters set up in the affidavit and such answer shall be filed with the justice of the peace, within the time required by the writ for the garnishee to appear. [Amendment, approved Mar. 12, 1903; L. 1903, p. 82.]

§ 6687. Judgments in peace proceedings—Lien on lands.—Where a defendant who has been required to enter into a recognizance to keep the peace has been ordered to pay the costs of the prosecution, such judgment for costs constitutes a lien on her real estate: *Clallam County v. Hall*, 23 Wash. 85, 62 Pac. 443.

§ 6695. Examination of persons charged with offenses.—The fact that the complaint before a committing magistrate does not state facts sufficient to consti-

tute a crime, with all the particularity required in an indictment or information, would not render all the subsequent proceedings void, nor make illegal the custody of one committed after an examination upon such informal complaint, since the determination by the magistrate of the probable cause of the guilt of the accused is based upon the evidence: *State v. Newton*, 29 Wash. 373, 70 Pac. 31.

A warrant is not void on its face when it authorizes the officer to arrest defend-

ant for defacing a building, described as the property of B. "and divers other persons," further reciting that it was not the property of defendant: *State v. Yourex*, 30 Wash. 611, 71 Pac. 203.

The fact that a warrant for the arrest of defendant for defacing a building belonging to private parties recited that the building was upon the public highway would not render the warrant void on its face, inasmuch as there are circumstances when such a building may lawfully be upon the public highway: *Id.*

The question of whether a warrant of arrest was either valid or void upon its face being one of law, it was not error for the court to charge the jury that the warrant authorized an officer to make the arrest, where the court had already determined in favor of its validity: *Id.*

§ 6755. Appeal from J. P. court—Notice of appeal.—Under Code of Procedure, section 1631, it is essential, in order to confer jurisdiction on the superior court, that the notice of appeal be filed with the justice prior to the service of a copy thereof upon the adverse party: *State ex rel. Alladio v. Superior Court*, 17 Wash. 54, 48 Pac. 733.

§ 6780. Of procedure in criminal actions—Limitations.—Under Code of Procedure, section 1188 (Bal. Code, § 6780) which provides that prosecutions for the offenses of murder and arson, where death ensues, may be commenced at any period after the commission of the offense, and for offenses the punishment of which may be imprisonment in the penitentiary, within three years after their commission, the term "murder" includes both degrees of that offense, and manslaughter, and for such crimes a prosecution may be instituted at any period after the commission of the offense, although the lower degrees of homicide may be punished only by imprisonment in the penitentiary. A preliminary examination before a committing magistrate constitutes the commencement of a prosecution: *State v. Erving*, 19 Wash. 435, 53 Pac. 717.

§ 6782. Of parties—Distinction between principal and accessory abolished.—The object of the statute (Code Proc., § 1189) abolishing the distinction between principals and accessories before the fact, so far as their trial and punishment are concerned, was to do away with the technical hindrances which before existed in relation to the trials of accessories, to provide for the indictment and trial of an accessory though the principal had been acquitted and to make an accessory before the fact the same as a principal, so far as the mode, manner, time of trial and extent of punishment are concerned: *State v. Gifford*, 19 Wash. 464, 53 Pac. 709.

Inasmuch as the distinction between principals in the first and second degree

and accessories before the fact has been abolished by statute in this state, it is no variance for an information to charge defendant as a principal and for the evidence to show that he was guilty in the second degree or as an accessory before the fact: *State v. Webb*, 20 Wash. 500, 55 Pac. 935.

§ 6788. Of venue.—The fact that defendant was given a check in King county, which he deposited to his credit in a bank there, then went to Pierce county, drew his check on the King county bank and had it cashed by a bank in Pierce county, receiving the money and secreting it in the latter county would not fix the venue of the crime in the latter county, if the intent to convert was entertained by the defendant in the county in which he received the check, and it was in that county that he refused to account for the money upon his return thereto after having disposed of it in the other county: *State v. Hoshar*, 26 Wash. 643, 67 Pac. 386.

§ 6794. Change of venue.—The refusal of the court to grant a change of venue is not ground of reversal except upon a showing of an abuse of the discretion lodged in the court of such matters. Upon an application for a change of venue, it is not error to refuse to grant an oral examination of witnesses whose affidavits have been submitted in the matter: *State v. Straub*, 16 Wash. 111, 112, 47 Pac. 227.

Under the provisions of Ballinger's Code, sections 6794, 6795, it is a matter within the discretion of the trial judge to refuse or grant a change of venue, when application therefor is made on the ground of the alleged prejudice of the judge; and his discretion is not restricted to the mere matter of granting a change to some other county, or to continuing the cause until a visiting judge may be called in: *State v. Hawkins*, 23 Wash. 289, 63 Pac. 258.

§ 6802. Information without preliminary examination.—A preliminary examination before a committing magistrate, prior to the filing of an information for a felony, is not essential, under article 1, section 25, of the constitution permitting prosecutions by information, as the legislature may prescribe, and Code of Procedure, section 1204, providing in what cases informations may be filed: *State v. McGilvery*, 20 Wash. 240, 55 Pac. 115.

The rule governing in case of prosecutions by information for felony, that the information need not allege the grounds justifying procedure in that form rather than by indictment, but that defendant must urge objections because of the absence of grounds for the filing of an information prior to his plea thereto, is applicable also in prosecutions for mis-

demeanor by information: *State v. Paoli*, 24 Wash. 71, 63 Pac. 1102.

§ 6832. Witnesses' names on information.—The admission in evidence, over objection, of the testimony of a witness whose name is incorrectly indorsed on the information is not error, when no application is made by the defendant for continuance on the ground that the name of the witness does not appear upon the information: *State v. Hunter*, 18 Wash. 670, 52 Pac. 247.

Where the testimony of a witness for the prosecution is offered in rebuttal for the purpose of meeting evidence tendered by the defendant, the defendant cannot complain of the failure of the prosecution to indorse the witness' name upon the information: *State v. Phelps*, 22 Wash. 181, 60 Pac. 134.

§ 6833. Information—Verification of.—The verification of an information charging defendant with a crime, to the effect that it is true as the affiant "verily believes," is sufficient: *State v. Cronin*, 20 Wash. 512, 56 Pac. 26.

§ 6842. Variance.—There is a fatal variance, when the evidence shows that one charged with burglariously breaking and entering a dwelling-house was an accessory to the crime, but in fact not present at its commission: *State v. Morgan*, 21 Wash. 355, 58 Pac. 215.

§ 6844. Duplicity.—An information which charges that defendant feloniously made, forged, and counterfeited a certain bank check, and then and there unlawfully uttered and published it as true, states but one continuous act with reference to the same instrument, and hence is not void for duplicity or on the ground of charging more than one crime: *State v. Newton*, 29 Wash. 374, 70 Pac. 31.

An information charging larceny which alleges the taking of different property from two different persons, without alleging that the taking was at the same time and place, other than the averment that it was on a given day in a certain county, is bad for duplicity and uncertainty, in contravention of the rules stated in Ballinger's Code, sections 6844, 6842, requiring that the indictment or information charge but one crime, in one form only, and that it must be direct and certain as regards the crime charged: *State v. Bliss*, 27 Wash. 463, 68 Pac. 81.

§ 6845. Variance as to time alleged.—It is not a fatal variance to fail to prove that the crime was committed on the particular day alleged in the information, but, under Ballinger's Code, section 6845, it is sufficient if it be proved to have been committed within the time in which an action may be commenced on account thereof: *State v. Anderson*, 30 Wash. 14, 70 Pac. 104.

§ 6848. Words and phrases.—An information which charges that defendant "willfully, unlawfully, purposely and feloniously, and of his deliberate and premeditated malice, with intent to kill and murder" another, "an assault did make in and upon the person of" the other, "with a deadly weapon," without alleging a present ability to carry into execution the attempt, as in a simple assault, sufficiently charges the crime of assault with intent to commit murder: *State v. Levan*, 23 Wash. 548, 63 Pac. 202.

§ 6850. Requisites of information—Murder.—An information charging murder sufficiently describes the crime, when it alleges that defendant "did purposely and of deliberate and premeditated malice, kill one Kelly Annan, as follows" (describing the manner of killing), although the information does not allege that the particular acts or instrumentalities of the killing were done unlawfully, with deliberate and premeditated malice: *State v. Johnny Tommy*, 19 Wash. 270, 53 Pac. 157.

An information charging murder in the first degree states sufficient facts, when it alleges that defendant, at a certain time and place, "purposely and of his deliberate and premeditated malice killed" deceased, "by then and there purposely and of his deliberate and premeditated malice shooting and wounding the said" deceased "with a pistol, which" defendant "then and there held in his hand": *State v. Cronin*, 20 Wash. 512, 56 Pac. 26.

While certain facts must exist in order to warrant prosecution by information, it is not necessary that the existence of such facts should appear upon the face of the information: *State v. Boyce*, 24 Wash. 514, 64 Pac. 1117.

Under Ballinger's Code, section 7042, which provides that every person who shall unlawfully kill any human being without malice, involuntarily, but in the commission of some unlawful act, shall be deemed guilty of manslaughter, an information charging manslaughter is sufficient thereunder, although it sets up facts constituting the offense of producing a miscarriage the punishment for which is provided in Ballinger's Code, section 7068, when such facts are pleaded only for the purpose of charging the killing as having been done in the commission of a prohibited offense and there is no punishment provided in the statute against producing miscarriages where death results from the commission of such acts: *State v. Power*, 24 Wash. 35, 63 Pac. 1112.

An information charging defendant with killing another "with an iron instrument, then and there a deadly weapon," though general in its description of the

weapon, is good against an objection made after verdict: *State v. Anderson*, 30 Wash. 14, 70 Pac. 104.

Assault with deadly weapon.—The fact that under an information charging the defendant with the crime of assault with a deadly weapon he might be convicted of assault and battery, or an assault, does not render it invalid as charging more than one crime, since these are but lesser grades of the offense charged: *State v. McCormick*, 20 Wash. 94, 54 Pac. 764.

Robbery.—An information charging the crime of robbery is insufficient when it fails to allege ownership of the property taken in some one, other than the defendant: *State v. Dengel*, 24 Wash. 49, 63 Pac. 1104.

Assault with intent to rob.—Under the liberal rules for determining the sufficiency of informations established by Ballinger's Code, sections 6850, 6851, an information charging defendant with assault "with intent to commit a felony" is not objectionable on the ground of failing to charge a crime in not naming a particular felony, where such charging part is followed by the statement of facts which show the felony to be robbery: *State v. Costello*, 29 Wash. 367, 69 Pac. 1099.

Rape.—An information charging defendant with the crime of assault with intent to commit rape upon another is not insufficient by reason of failure to allege defendant's present ability to carry his intent into execution: *State v. Dunlap*, 25 Wash. 292, 65 Pac. 544.

Sodomy.—An information charging sodomy is sufficient when it alleges that defendant did unlawfully and feloniously make an assault upon a male person, and, against the order of nature, had a venereal affair with and carnally knew such male person, and then and there feloniously and against the order of nature, with said male person, did commit and perpetrate the infamous, detestable and abominable crime against nature of buggery, contrary to the statute, etc.: *State v. Romans*, 21 Wash. 284, 57 Pac. 819.

Incest.—An information charging an attempt to commit incest is not bad because it does not specifically allege the purpose and intent of the parties to carnally know each other, if such intent is the necessary and irresistible inference to be derived from the language employed. An information charging an attempt to commit a crime need not negative the presumption that it failed of commission through the volition of defendant, since the subsequent abandonment cannot avail defendant, if the elements of an attempt existed on his part. An information charging a man with the crime of incest is not bad for failing to charge the woman with

knowledge of their relationship, if the knowledge of the defendant is duly charged: *State v. McGilvery*, 20 Wash. 240, 55 Pac. 115.

Horse stealing.—The failure to allege the exact date of the commission of a crime is not ground of demurrer against an information, where a date within the statute of limitations is alleged as the time of its commission: *State v. Gottfreedson*, 24 Wash. 398, 64 Pac. 523.

Larceny.—The fact that defendant's name is omitted in the first part of an information will not render it fatally defective, if in another part of the information he is charged by name with having committed the acts which constitute the crime charged, since he is thereby sufficiently informed to enable him to intelligently prepare his defense: *State v. Maldonado*, 21 Wash. 653, 59 Pac. 489.

Embezzlement.—An information which charges that on a certain date, in King county, defendant, being then and there the agent of another, was intrusted with a certain sum of money on account of his principal and took into his possession such sum for and on account of his principal, and afterward did fail to account to said principal for the same, and did then and there unlawfully, etc., take, embezzle and convert same to his own use, sufficiently states the time when and place where the money was embezzled: *State v. Hoshor*, 26 Wash. 643, 67 Pac. 386.

Perjury.—An information charging a person with perjury in having testified falsely on a trial for the theft of cattle that he saw defendant purchase the cattle is demurrable, when it does not allege that he stated from whom defendant purchased, and when the information makes the materiality of the inquiry consist in whether the defendant in the larceny case purchased the cattle in question from a specified person on a certain day, or at all: *State v. Guse*, 21 Wash. 269, 57 Pac. 831.

An indictment charging defendant with taking an oath as an election officer that he was not interested in any bet or wager on the result of the election, whereas in truth and in fact said defendant was interested in a certain bet and wager on the result of said election, but which fails to charge when, where or with whom such wager was laid, does not sufficiently charge perjury: *State v. Roberts*, 22 Wash. 1, 60 Pac. 65.

Circulating indecent picture.—An information which alleges that defendant "knowingly" distributed a certain indecent picture sufficiently charges knowledge on his part of the indecency of the picture: *State v. Ulsemer*, 24 Wash. 657, 64 Pac. 800.

Selling liquor to minor.—An information which charges that defendant "did

willfully, unlawfully and knowingly sell and give intoxicating liquor," to a minor, sufficiently charges that defendant had knowledge of the minority of the purchaser, and the word "knowingly" is not referable to the act of selling liquor alone, but imports knowledge of the thing done as well as an evil intent or bad purpose in doing such thing: *State v. De Paoli*, 24 Wash. 71, 63 Pac. 1102.

Assault.—Under the rule that it is not essential to use the words of the statute if others of like import are used, an information charging defendant with making an unlawful and felonious assault is equivalent to charging it as made "in a rude, insolent and angry manner." When an information alleges a consummated assault in the attempt to commit a crime, a further allegation that defendant had the present ability to carry the attempt into execution is surplusage and not necessary to be alleged: *State v. Bohn*, 19 Wash. 36, 52 Pac. 325.

§ 6859. Information for larceny and embezzlement of securities or money.—In an information charging the larceny of money a description of the property stolen as being two one hundred dollar bills and one fifty dollar bill, lawful money of the United States, is sufficient under Code of Procedure, section 1253. The fact that an information charging the larceny of money, after naming the number and denomination of the bills, alleges further "a more exact description being not now known," while a witness for the state gives an exact description of the bills in his testimony, does not constitute a fatal variance, when there is no showing of want of diligence on the part of the prosecuting attorney to ascertain and charge the exact description. In a prosecution for the larceny of money, it is competent to put in evidence the money taken from defendant's person when arrested, although not identified as a part of the stolen money, merely as a circumstance showing he had money when arrested, which the jury might properly consider: *State v. Burns*, 19 Wash. 52, 52 Pac. 316.

In an information charging robbery of money it is sufficient to describe the property taken as lawful money, without any further designation thereof, under Code of Procedure, section 1253 (Bal. Code, § 6859): *State v. Johnson*, 19 Wash. 410, 53 Pac. 667.

In an information charging the stealing of money, no particular description of the money is necessary: *State v. Palmer*, 20 Wash. 207, 54 Pac. 1121.

§ 6866. Bail—Rights of sureties.—Under Revised Statutes of the United States, section 1014, providing for the admission to bail of offenders agreeably to the usual mode of process in the state

in which the criminal may be found, and under Code of Procedure, section 1375, providing that bail in criminal actions shall justify and have the same rights as in civil cases, a surety upon a bail bond in the United States district court has a right of action against a cosurety for contribution, when such surety has been compelled to pay the penalty provided in the bond: *Belond v. Guy*, 20 Wash. 160, 54 Pac. 995.

§ 6898. Demurrer — Failure to plead over, effect of.—Where a defendant, without objection, enters upon the trial of a criminal case, in which he has failed to enter a plea, and the case is tried on the merits by the prosecution and defense, as if a plea of not guilty has been interposed, and the instructions of the court give the jury to understand that every material fact charged in the information is in issue, such error is without prejudice, being a mere irregularity not affecting any substantial rights of the defendant. The objection that defendant has been convicted in a criminal case, without any plea having been interposed by or for him, cannot be raised for the first time on appeal. Where a plea to a criminal information has actually been made but not recorded, and the record has been subsequently corrected by the trial court by a nunc pro tunc order, the want of plea in the original record cannot be urged as ground of reversal on appeal: *State v. Straub*, 16 Wash. 111, 47 Pac. 227.

The provisions of this section held not to conflict with the provisions of section 6906: *Id.*

Under Ballinger's Code, section 6898 (Code Proc., § 1282), which provides that judgment may be rendered against defendant in a criminal case, if he fails to plead upon the overruling of his demurrer to the indictment or information, he may be sentenced where he declines to plead, after ample opportunity to do so, as the subsequent enactment of Code of Procedure, section 1364, providing that "no person indicted or informed against for any offense shall be convicted thereof, unless by confession of his guilt in open court or by the verdict of a jury accepted and recorded in open court," cannot be construed as a repeal of section 1282, either directly or by implication: *State v. Harding*, 20 Wash. 556, 56 Pac. 399, 929.

§ 6916. Dismissal a bar in misdemeanor but not in felony cases.—Under Ballinger's Code, section 6916, which provides that the dismissal of an information is a bar to another prosecution for the same offense, if it be a misdemeanor, but is not a bar if the offense charged is a felony, one charged with a felony but convicted of a misdemeanor is not entitled to claim that the information was barred because

of the dismissal of a prior one: *State v. Armstrong*, 29 Wash. 57, 69 Pac. 392.

§ 6925. Of trials and verdicts—Rights of accused on trial.—The constitutional provision that the accused in a criminal prosecution shall have the right to meet the witnesses face to face will not exclude evidence of the testimony given by a deceased witness upon a former trial, as the accused has once had the advantage of seeing the witness face to face and of subjecting him to cross-examination: *State v. Cushing*, 17 Wash. 545, 50 Pac. 512.

§ 6929. Continuance.—The refusal of a continuance in a criminal cause does not show an abuse of discretion, when the cause has been finally set for trial more than five weeks after defendant's arrest, one continuance having been granted him in the meantime: *State v. Burns*, 19 Wash. 52, 52 Pac. 316.

The action of the trial court in overruling an application for continuance will not be considered on appeal, in the absence of a statement of facts: *State v. Johnny Tommy*, 19 Wash. 270, 53 Pac. 157.

A defendant in a criminal case is entitled to a continuance upon application therefor based upon a showing that a necessary witness whom he desired to examine in his behalf is under conviction for the crime of perjury, but that he has appealed therefrom, and that defendant asks for a continuance until the appellate court shall have heard and determined the appeal: *State v. Harras*, 22 Wash. 57, 60 Pac. 58.

The refusal of the court to grant a continuance in a criminal prosecution does not show an abuse of the discretion vested in it, when it appears that several of the witnesses, including those absolutely necessary to the defense, for whom the continuance was asked, were present at the trial and that other witnesses were obtained from localities where the witnesses lived who were mentioned in the affidavit for continuance, and who testified substantially to all that it was claimed in the affidavit the witnesses desired would testify to: *State v. Boyce*, 24 Wash. 514, 64 Pac. 1117.

A motion for a continuance in a criminal case, on the ground that the defendant did not have time to prepare for his trial and procure witnesses for his defense was properly denied where it appears from the record that there was a period of forty-one days between the commission of the crime and the date of trial, and more than a month between the dates of preliminary examination and trial; that defendant was represented by attorney during the whole of the time; that the scene of the crime was located thirty-five miles from the county seat, but in no way shown to be inaccessible; and where the

affidavit for continuance failed to comply with the provisions of Ballinger's Code, section 6929, in such matters, in that it did not give the names of any absent witnesses nor what they would testify to, nor did it show that in case of a continuance any testimony could have been procured that was not produced on the trial: *State v. Vance*, 29 Wash. 436, 70 Pac. 34.

The granting or refusing of a motion for a continuance being a matter within the sound discretion of the court, the refusal of the court to grant a continuance applied for on the ground that one of defendant's attorneys had been suffering from a surgical operation upon his throat and was thereby prevented from working as effectually as he otherwise could have done, will not be disturbed on appeal, especially where it appears that during a portion of the time prior to trial the defendant had the assistance of another attorney: *Id.*

§ 6930. Trial—Jury of twelve.—Ballinger's Code, section 6930, which provides that "except as otherwise specially provided, issues of fact joined upon an indictment or information shall be tried by a jury of twelve persons, and the law relating to the drawing, retaining, and selecting jurors, and trials by juries in civil cases shall apply to criminal cases"; and Ballinger's Code, section 4978, which provides that in trials of civil actions by jury, the jury shall consist of twelve persons unless the parties consent to a less number, do not confer the right to try a criminal case by a jury of less than twelve persons: *State v. Ellis*, 22 Wash. 129, 60 Pac. 136.

§ 6933. Jury—Challenge of, to the panel—When allowed.—Under Ballinger's Code, section 6933, requiring a challenge to a jury panel to be proved to the satisfaction of the court, it will be presumed, where the record shows that the court heard testimony in passing upon the challenge which was not brought up on appeal, that it was sufficient to sustain the court's conclusion: *State v. Vance*, 29 Wash. 437, 70 Pac. 34.

§ 6936. Jury, oath of.—Although Laws 1891, page 59, section 68, provides that the jury in a criminal case shall be sworn well and truly to try the issue between the state and the prisoner at the bar "according to the evidence," yet an oath in the following form, "You and each of you do solemnly swear that you will well and truly try [the prisoner named] and true deliverance make between the state and the prisoner at the bar," is not ground for reversal, when they have been charged by the court that their verdict was to be rendered upon the evidence produced in the case: *State v. Gin Pon*, 16 Wash. 425, 47 Pac. 961.

An oath obligating the jury to try a criminal case before them "according to the law and the evidence as given on the trial," is not prejudicial error, even if they are erroneously instructed as to the law upon a matter which is necessarily harmless to defendant: *State v. Johnny Tommy*, 19 Wash. 270, 53 Pac. 157.

§ 6940. **Witness—Defendant competent, but will not be compelled to criminate himself.**—Although a defendant in a criminal prosecution offers himself as a witness in his own behalf, he cannot be compelled to testify to matters tending to criminate him, under the constitutional guaranty that "no person shall be compelled in any criminal case to give evidence against himself": *State v. O'Hara*, 17 Wash. 525, 50 Pac. 477, 933.

§ 6942. **Confession, as evidence.**—A confession extorted from an accused person by keeping him in a dark cell until he is thereby induced to make a confession is not admissible in evidence, under Code of Procedure, section 1308 (Bal. Code, § 6942), making confessions under inducement admissible, "except when made under the influence of fear produced by threats": *State v. McCullum*, 18 Wash. 394, 51 Pac. 1044.

The weight of admissions of one accused of murder, made to the officers who had him in custody after his arrest, is for the determination of the jury, in the absence of any evidence that such admissions were made under fear produced by threats: *State v. Webster*, 21 Wash. 63, 57 Pac. 361.

Testimony of the accused, amounting to a voluntary confession, given on his preliminary examination, may be introduced in evidence on his trial, under our statute, which provides that such confession may be given as evidence against the accused, "except when made under the influence of fear produced by threats": *State v. Lyts*, 25 Wash. 347, 65 Pac. 530.

The testimony of an officer as to admissions made by the accused after his arrest is not inadmissible, by reason of the officer's failure to state, in the language of the statute, that they were not made "under the influence of fear produced by threats," when the substance of the statute has been given in other terms: *State v. Newton*, 29 Wash. 374, 70 Pac. 31.

§ 6943. **Evidence — Variance.** — Proof that a murder was committed with a cigar-cutter, under an information charging the killing as done "with an iron instrument," does not constitute a variance, when the cigar-cutter was an iron instrument: *State v. Anderson*, 30 Wash. 14, 70 Pac. 104.

§ 6947. **Jury not to separate.**—Permitting a jurymen to be brought to the court on a street-car in charge of one bailiff,

while the remainder of the jurymen walked in charge of another bailiff is not a violation of this provision: *State v. Burns*, 19 Wash. 53, 52 Pac. 316.

Sealed verdict.—It is reversible error for a jury in a criminal case to agree upon and deliver a sealed verdict to their foreman and then separate prior to coming into court to return their verdict, even though such action is pursuant to an agreement between the prosecution and defense and by direction of the court: *State v. Mason*, 19 Wash. 94, 52 Pac. 525.

The separation of a jury in a criminal case without the consent of the defendant does not amount to a constructive acquittal, but merely entitles him to a new trial: *State v. Harras*, 22 Wash. 57, 60 Pac. 58.

It is reversible error for the court to ask defendant, in the presence of the jury, after the trial had proceeded two days without separation, and the case was almost ready to submit, if he would consent to one of the jurors returning home because of the sickness of his child, to which separation defendant was thus compelled to consent, for fear of prejudicing his case in the mind of said juror: *State v. Parker*, 25 Wash. 405, 65 Pac. 776.

§ 6948. **View of premises—Court may order.**—The refusal of the court to direct a view of the premises by the jury is not error, when there is no showing of an abuse of the discretion given the trial judge in such matters by the provisions of Code of Procedure, section 1312: *State v. Hunter*, 18 Wash. 670, 52 Pac. 247.

§ 6949. **Separate trials for defendants jointly charged.**—Under Code of Procedure, section 1313, which provides that "when two or more defendants are indicted or informed against jointly, any defendant requiring it shall be tried separately," a defendant is entitled as of right to a severance up to the assignment of the cause for trial, from which time until the jury is sworn to try the cause the matter of granting a severance is within the discretion of the court: *State v. Mason*, 19 Wash. 94, 52 Pac. 525.

§ 6955. **Jury may find any degree of offense.**—A person charged with a consummated offense may be found guilty, under Ballinger's Code, section 6955, of an attempt to commit the offense: *State v. Romans*, 21 Wash. 284, 57 Pac. 819.

§ 6956. **Of offense necessarily included in the one charged.**—The fact that an information charging defendant with assault with intent to commit murder also contains a charge of assault and battery does not render it bad on the ground of duplicity, since, under Code of Procedure, section 1320, a defendant may be found guilty of any defense necessarily included within the crime charged: *State v. Michel*, 20 Wash. 162, 54 Pac. 995.

Under an indictment or information charging robbery, the defendant may be convicted of the lesser offense of larceny, and, where the evidence tended to show a larceny rather than a robbery, it was error for the court, upon a prosecution for robbery, to refuse to instruct on the crime of larceny as included within the charge of robbery: *State v. Dengel*, 24 Wash. 49, 63 Pac. 1104.

§ 6960. Rendition of verdict.—Under the statutes of this state, a jury in a criminal case is not authorized, after agreeing upon a verdict, to seal same and separate, even with the consent of both the state and the defendant: *State v. Rogan*, 18 Wash. 44, 50 Pac. 582.

Separation after agreement.—A jury in a criminal case cannot, after agreeing upon a verdict, separate before its return into court: *State v. Barkuloo*, 18 Wash. 142, 51 Pac. 350.

§ 6961. Verdict, form of.—A verdict returned by the jury signed by one member as "foreman," followed by the signatures of the other eleven, one of whom signs by mark, is in substantial conformity with the requirements of Ballinger's Code, section 6961: *State v. Cronin*, 20 Wash. 512, 56 Pac. 26.

§ 6965. Of new trial—Insufficiency of evidence.—While it is the plain province of the jury under the law to weigh the testimony, yet, when it becomes evident that the accused has been convicted of a crime without any testimony having been introduced against him, it becomes the duty of the courts to interfere and set aside such verdict: *State v. O'Hara*, 17 Wash. 526, 50 Pac. 477, 933.

Where, upon a motion for a new trial upon the ground that a verdict of murder in the first degree is contrary to the evidence, the court finds the evidence insufficient to support the verdict, it is beyond the power and discretion vested in the court to substitute its own finding that the crime was murder in the second degree and give verdict accordingly: *State v. Symes*, 17 Wash. 596, 50 Pac. 487.

Surprise.—Defendant not entitled to new trial on this ground upon showing that a shirt was introduced in evidence and shown by state to belong to him, and which he denied, it appearing that the same shirt was produced before the examining magistrate: *Id.*

Newly discovered evidence.—Where several witnesses had on the trial identified a shirt which did not belong to the defendant, but to another, evidence of the mother and sister of such other person that they made the shirt for such other person, held to be cumulative and not sufficient to sustain the motion for new trial: *Id.*

A defendant convicted of manslaughter as the result of an abortion procured by him was properly denied a new trial on the ground of newly discovered evidence, because of lack of reasonable diligence on his part in procuring the evidence earlier, when it appeared that the newly discovered evidence was that of a nurse whom defendant had employed to care for the deceased, that he had been at liberty all the time prior to trial and knew the whereabouts of the nurse, but had never sought and questioned her as to her knowledge concerning matters that would be subject to inquiry at his trial: *State v. Power*, 24 Wash. 35, 63 Pac. 1112.

Misconduct of jury.—Not error to refuse where defendant produced one affidavit to support charge of juror talking with third person, and the juror and bailiff swore to the contrary, and there was no proof as to what the conversation concerned: *State v. Hunter*, 18 Wash. 670, 52 Pac. 247.

A juror who has testified on his voir dire examination that he did not know defendant, and that he could fairly and impartially try the case, free from bias, is guilty of such misconduct as to entitle defendant to a new trial, where, after retirement to the jury-room, he makes statements to his fellow jurors of facts not in evidence against defendant, and asserts his belief in his guilt because he knew him to be a member of a gang of toughs: *State v. Parker*, 25 Wash. 406, 65 Pac. 776.

§ 6975. Of judgments on verdict—Costs against defendant.—It was not error for the court to refuse to strike from the cost-bill against defendant the jury fee, clerk's and sheriff's fees, although the compensation of such officers is provided for by salaries instead of fees: *State v. Armstrong*, 29 Wash. 57, 69 Pac. 392.

§ 6993. Death warrant.—The act of March 8, 1901 (Laws 1901, p. 100), relating to the death warrant and amending sections 6993, 6995, Ballinger's Code, relative thereto, not being effective under the constitution (article 2, section 31) until ninety days after the adjournment of the legislature which enacted it, which would make the date of its going into effect June 12, 1901, never became operative by reason of the passage and approval by the legislature in extraordinary session on June 12, 1901, of the act repealing said amendatory act, with an emergency clause declaring the repeal immediately effective, since a statute which takes effect from and after its passage goes into operation on the day when approved and relates back to the first moment of that day: *In re Boyce*, 25 Wash. 612, 66 Pac. 54.

§ 6993a. Relating to the Death Warrant.*Issue and Contents of Warrant.*

When judgment of death is rendered following conviction and no appeal is taken, or the judgment has been affirmed on appeal, a death warrant shall be issued by the clerk of the trial court, which said warrant shall be signed by a judge of said court and attested by the clerk thereof under the seal of the court. Said warrant shall be directed to the superintendent of the state penitentiary of the state of Washington, and shall state the conviction of the person named therein and the judgment of the court, and appoint a day in which the judgment shall be executed by the superintendent of the state penitentiary, which shall not be less than thirty nor more than ninety days from the date of final judgment.

Accompanying Order.

At the time of the issuance of said death warrant an order shall be issued by the clerk of the court, which shall be signed by the judge and attested by the clerk under the seal of the court. Said order shall direct the sheriff to hold the person condemned to death, who shall be named therein, in safe custody and forthwith deliver said person, together with the death warrant, into the hands of the superintendent of the state penitentiary.

Execution of Warrant.

Upon delivery to him of said death warrant and of the person therein named, the superintendent of the state penitentiary shall take the person condemned to be executed and keep said person in safe custody within said state penitentiary until the day appointed in the warrant for the execution, upon which appointed day he shall carry out the mandate contained in said warrant by executing said condemned person within the walls of the state penitentiary in the manner provided by law. And between the date of receiving such condemned person and the date fixed in such warrant for his execution, such superintendent shall not suffer or permit any person to visit, converse or communicate with such condemned person excepting the attendants in the state penitentiary, legal, spiritual and medical advisers, and the members of the immediate family of the condemned person, which visits and communications shall be under and subject to the rules and regulations of the state penitentiary.

Record of Warrant by Prison Superintendent.

The superintendent of the state penitentiary shall keep in his office as part of the public records a book in which shall be entered a copy of the death warrant and his return made thereon, together with a complete statement of his acts in pursuance of said warrant.

Return of Warrant by Prison Superintendent.

Within twenty days after said execution the superintendent of the state penitentiary shall return said death warrant to the clerk of the court from which same was issued with his return thereon showing all proceedings had by him thereunder.

Return of Order by Sheriff.

The sheriff to whom the above-named order is issued and delivered shall immediately execute such order and return the same into court within twenty days after he has delivered the death warrant and the person named therein into the hands of the superintendent of the state penitentiary, with his return thereon showing all proceedings had by him thereunder.

Record in Clerk's Office.

The clerk of the court from which the death warrant and the order to the sheriff were issued shall, upon receipt of the returns from the superintendent of the state penitentiary and from the sheriff hereinbefore directed, file same with the records in the case and subjoin to the record of conviction and sentence a brief abstract of such returns.

Custody of Condemned.

Pending the issuance of the death warrant, the sheriff shall hold the condemned person in safe custody.

All acts or parts of acts in conflict with this act are hereby repealed, except as hereinafter provided.

Act not to Retroactive.

The provisions of this act shall not apply to any act done or crime heretofore committed, and all acts and crimes heretofore done or committed shall be prosecuted and punished under the laws existing at the time of the commission of said acts or crimes in the same manner as if this act had not been enacted, and all such existing laws and especially sections 6993 and 6995 of Ballinger's Annotated Codes and Statutes of Washington are hereby continued in force as to all such acts and crimes committed prior to the taking effect of this act. [Filed without approval June 24, 1901; L. 1901, p. 17, special session.]

§ 6995. Filing Death Warrant—Return.

The sheriff shall immediately upon the execution of the order mentioned in section 6993, make return thereon of his doings and file the same with the clerk of the court issuing the same; and the clerk on receipt of the warrant and return from the warden of the state penitentiary shall subjoin to the record of conviction and sentence, a brief abstract of such returns. [Amendment, approved Mar. 8, 1901; L. 1901, p. 102.]

§ 6999. Relating to Time Sentence Commences in Cases of Felony.

In the event no appeal be taken from the judgment of conviction of a felony, the term of sentence imposed upon such judgment shall commence to run from the date of the imposition thereof. In the event an appeal be taken from such judgment of conviction, and upon such appeal the judgment be affirmed, the term of sentence shall commence to run from the date upon which the remittitur shall be filed in the lower court.

All acts and parts of acts in conflict with the provisions of this act are hereby repealed. [Approved Mar. 5, 1903; L. 1903, p. 39.]

§ 7035. Of crimes and punishments—Homicide—Instructions.—In a prosecution for homicide, an instruction does not sufficiently point out the distinction between murder in the first and second degrees, nor correctly define the element of deliberation and premeditation, when it charges the jury that “as to the length of time necessary for deliberation and premeditation, you are instructed that no appreciable space of time need elapse between the forming of such intent and the infliction of the fatal wound; all that is necessary is, that the deliberate and premeditated intent be formed before the fatal wound is inflicted. It matters not if the wound be inflicted immediately after the forming of the intent. The forming of the deliberate and premeditated intent, and the inflicting of the mortal wound, may follow each other as rapidly as successive thoughts of the mind.” The refusal of the court to instruct that the portion of a dying declaration showing prior threats by the accused should be disregarded was prejudicial error, and cannot be presumed harmless from the fact that it was cumulative and merely corroborative of the testimony of another witness: *State v. Moody*, 18 Wash. 65, 51 Pac. 356.

In instructing the jury upon premeditated malice in connection with the crime of murder in the first degree, it is not erroneous to charge “that malice as used in the definition of murder in the first degree is qualified by the words ‘deliberate’ and ‘premeditated,’ and as thus qualified it means a fixed design to unlawfully take human life, accompanied with some degree of reflection thereon, and the act of killing which follows; the premeditation and reflection thereon may take place but a moment before the doing of the act, but both states of mind must have actual existence to make the offense murder in the first degree” (*State v. Rutten*, 13 Wash.

203, distinguished): *State v. Gin Pon*, 16 Wash. 425, 47 Pac. 961.

An instruction that malice includes not only anger, hatred and revenge, “but any other unlawful and unjustifiable motive,” is not prejudicial, when the succeeding portions of the charge immediately qualify and explain such definition by that, “a thing done with a wicked mind and attended with such circumstances as plainly indicate a heart regardless of social duty and fully bent on mischief indicates malice within the meaning of the law.”

An instruction is misleading and liable to confuse a jury as to the distinction between murder and manslaughter, when it charges “that, if without provocation as is apparently sufficient to excite reasonable apprehension a person shoots another in such a way as is likely to occasion death, although he had no previous malice against the person, yet he is presumed to have had such malice at the moment of shooting, and if death results from such shooting it will be murder.”

In a prosecution for an assault with intent to murder, the intent as well as the assault is a necessary element of the crime, and cannot be inferred as a legal presumption from the use of a deadly weapon; consequently an instruction is erroneous in such a case which charges that if the defendant did shoot the prosecuting witness and that the natural and ordinary consequences of such shooting would be the death of the person assaulted, then the presumption of law is that the shooting was done with intent to kill: *State v. Dolan*, 17 Wash. 499, 50 Pac. 472.

In a prosecution for assault with intent to commit murder, it is error to refuse a requested instruction to the effect that the jury may, in case the evidence warrants it, find the defendant guilty of assault, or of assault and battery: *Id.*

§ 7038. Defining Murder in Second Degree.

Every person who shall purposely and maliciously, but without deliberation and premeditation, kill another, shall be deemed guilty of murder in the second degree, and upon conviction thereof shall be imprisoned in the penitentiary for a term of not less than ten years, or during life, in the discretion of the trial court, and kept at hard labor. [Amendment, approved Mar. 16, 1903; L. 1903, p. 240, § 1.]

§ 7049. Kidnaping Defined.

Every person who shall steal and take, or forcibly and unlawfully arrest any person, and convey such person to parts without the state of Washington, or aid or abet therein, or who shall forcibly and unlawfully take or assist,

aid or abet, in forcibly and unlawfully taking or arresting any person, with intent to take such person to parts without said state, shall be deemed guilty of kidnaping, and upon conviction thereof shall be imprisoned in the penitentiary not more than twenty-one nor less than three years, and be fined not more than five thousand dollars nor less than one hundred dollars. And every person who shall entice, decoy, take, steal, abduct, kidnap or restrain, or forcibly and unlawfully detain any person, or who shall entice, decoy, take, steal, abduct, kidnap or restrain, or forcibly and unlawfully detain any person with intent thereby to extort money or any pecuniary advantage whatever from any person, or who shall by verbal or written communication, or otherwise, threaten to do any physical injury to any person so enticed, decoyed, taken, stolen, abducted, kidnaped or restrained, or forcibly or unlawfully detained, or who shall assist, aid or abet therein, shall be deemed guilty of kidnaping and upon conviction thereof shall be imprisoned in the penitentiary not more than twenty-one years nor less than three years, and be fined not more than five thousand dollars nor less than one hundred dollars. [Amendment, approved Mar. 7, 1901; L. 1901, p. 78.]

§ 7050. **Kidnaping — Consent.** — In a prosecution for kidnaping, under Ballinger's Code, section 7050, which provides that "if any person maliciously, forcibly or fraudulently lead, take, decoy or entice away any child under the age of twelve years, with the intent to detain or conceal such child from its parent, guardian, or other person having the lawful charge of such child, he shall be punished," the consent of the child would not constitute a defense: State v. Rhoades, 29 Wash. 61, 69 Pac. 389.

§ 7054. **Assault and battery—Information.**—Although an information may charge defendant with the crime of assault with a deadly weapon, which is a statutory offense, the defendant may be convicted, under the information, of the common-law offense of assault and battery, when the facts set forth in the pleading are sufficient to describe the latter offense: State v. Klein, 19 Wash. 368, 53 Pac. 364.

§ 7055. **Assault — Judgment.**—Where the statute provides that a person convicted of assault "shall be fined in any sum not exceeding \$500, to which may be added imprisonment in the county jail not exceeding six months," the action of the court in sentencing a person convicted of assault to imprisonment for five months, without first imposing a penalty by fine, is not erroneous, as being beyond the jurisdiction of the court to inflict: State v. Dunlap, 25 Wash. 292, 65 Pac. 544.

§ 7057. **Assault with intent to commit rape—Evidence in support of.**—In a prosecution for assault with intent to commit rape upon a female child under the age of twelve years, the mother of the prosecu-

trix may properly testify to the condition of the child's clothing, and as to what she found upon it, shortly after the alleged assault; the testimony of the mother as to complaints made by the prosecutrix to her immediately or within an hour after the commission of the alleged injury is admissible though such evidence should be restricted to the mere fact of complaint, without admitting any of the particulars of the complaint in evidence. The admission in evidence of a plan of the scene of an alleged crime, which does not purport to accurately describe the premises, is not error when it is received only for the purpose of enabling a witness to illustrate his testimony, and the court by a special instruction limits the jury's consideration of it to that purpose alone: State v. Hunter, 18 Wash. 670, 52 Pac. 247.

Information.—An information charging defendant with an assault with intent to commit rape, made "on the twentieth day of October, 1897, and within three years next before the filing of this information," by feloniously attempting to carnally know and abuse a female child under the age of eighteen years (the age of consent), is sufficient in its charges as to time and nature of the offense: State v. Smith, 19 Wash. 376, 53 Pac. 338.

§ 7058. **Assault with deadly weapon—Information.**—Under Ballinger's Code, section 7058, an information sufficiently describes the statutory offense thereunder, when it charges that defendant, "with intent to kill and murder" the prosecuting witness, did make an assault in and upon his person with a deadly weapon, to wit, a razor: State v. Young, 22 Wash. 273, 60 Pac. 650.

§ 7062. Rape—Consent of female under eighteen years of age.—The consent of the female does not constitute a defense upon a charge of assault with intent to rape a female child under the age of consent: *State v. Hunter*, 18 Wash. 670, 52 Pac. 247.

Where there is no evidence as to consent, not error to refuse instruction that the alleged assault must have been committed without such consent: *Id.*

Information.—Ballinger's Code, section 7062, defines carnal knowledge of a female under the age of eighteen years as constituting the crime of rape, and an information which conforms to the terms of the statute is sufficient, without conforming to the common-law requirements in charging such an offense: *State v. Phelps*, 22 Wash. 181, 60 Pac. 134.

Sufficiency of evidence.—Under a statute making it rape to have carnal knowledge of a female child under the age of eighteen years, a verdict against defendant is supported by sufficient evidence, when the prosecutrix and her brother testify that her age is sixteen, and her testimony that she was invited from school to meet defendant and that they remained together in a lodging-house where the offense was committed, is corroborated by other evidence: *Id.*

In a prosecution for rape committed by a father upon his daughter, the evidence was sufficient to sustain a conviction, although the only evidence of the commission of the act was that of the daughter,

which was contradicted by that of the father, where the daughter's testimony was corroborated by the fact of her father's flight when charged with his improper relations, and by a letter from him to his son, after arrest, endeavoring to get the latter to have the daughter not testify against him, so that he might get out of the scrape: *State v. Roller*, 30 Wash. 692, 71 Pac. 718.

Under Ballinger's Code, section 7062, which defines carnal intercourse with any female child under the age of eighteen years as rape, the act is a crime whether or not force is used, and the fact that the prosecuting witness testified in the trial that the defendant used force, while the information charged that defendant did "feloniously carnally know and abuse" the prosecutrix, would not support the objection that the defendant was extradited for one crime and tried for another: *Id.*

In the absence of statute requiring it, it is not necessary that the prosecuting witness be corroborated upon a prosecution for rape: *Id.*

§ 7066. Seduction — Information.—An information alleging that the defendant at a certain time and place, "did then and there unlawfully, willfully and feloniously by persuasions, promises of marriage and other false and fraudulent means, seduce, have sexual intercourse with and debauch — — —, an unmarried woman of previously chaste character," etc., sufficiently charges the crime of seduction: *State v. Rogan*, 18 Wash. 43, 50 Pac. 582.

§ 7074a. Defining Criminal Anarchy and Prescribing Penalty Therefor.

Criminal anarchy is the doctrine that organized government should be overthrown by force or violence, or by assassination of the executive head or of any of the executive officials of government, or by any unlawful means.

Acts Constituting Offense.

Any person who, by word of mouth or writing, advocates, advises or teaches the duty, necessity or propriety of overthrowing or overturning organized government by force or violence, or by assassination of the executive head, or any of the executive officials of government, or by any unlawful means; or, prints, publishes, edicts [edits], issues or knowingly circulates, sells, distributes or publicly displays any book, paper, document or written or printed matter in any form, containing or advocating, advising or teaching the doctrine that organized government should be overthrown by force, violence or any unlawful means; or openly, willfully and deliberately justifies by word of mouth or writing the assassination or unlawful killing or assaulting of any executive or other officer of the United States or of any state or of an [any] civilized nation having an organized government, or the committing of any other crime, with intent to teach, spread or advocate the doctrines of criminal anarchy, or organizes or helps to organize or becomes a member of or voluntarily assembles with

any society, group or assembly of persons formed to teach or advocate such doctrines, is guilty of a felony and punishable by imprisonment for not more than ten years, or by a fine of not more than \$5,000, or both.

Publication—Defense Permitted.

Every editor or proprietor of a book, newspaper or serial and every manager of a partnership or incorporated association by which a book, newspaper or serial is issued, is chargeable with the publication of any matter contained in such book, newspaper or serial. But in every prosecution therefor, the defendant may show in his defense that the matter complained of was published without his knowledge by another who had no authority from him to make the publication and whose act was disavowed by him as soon as known.

Unlawful Assembly—Voluntary Attendance—Punishment.

Whenever two or more persons assemble for the purpose of advocating or teaching the doctrines of criminal anarchy, as defined in section 1 of this act, such an assembly is unlawful, and every person voluntarily participating therein by his presence, aid or instigation, is guilty of a felony and punishable by imprisonment for not more than ten years, or by a fine of not more than \$5,000, or both. [Approved Mar. 7, 1903; L. 1903, p. 52.]

§ 7090. Offenses Against the Peace—Blacklisting.

Every person in this state who shall willfully and maliciously, send or deliver, or make or cause to be made, for the purpose of being delivered or sent or part with the possession of any paper, letter or writing, with or without name signed thereto, or signed with a fictitious name, or with any letter, mark or other designation, or publish or cause to be published any statement for the purpose of preventing any other person from obtaining employment in this state or elsewhere, and every person who shall willfully and maliciously "blacklist" or cause to be "blacklisted" any person or persons, by writing, printing or publishing, or causing the same to be done, the name, or mark, or designation representing the name of any person in any paper, pamphlet, circular or book, together with any statement concerning persons so named, or publish or cause to be published that any person is a member of any secret organization, for the purpose of preventing such person from securing employment, or who shall willfully and maliciously make or issue any statement or paper that will tend to influence or prejudice the mind of any employer against the person of such person seeking employment, or any person who shall do any of the things mentioned in this section for the purpose of causing the discharge of any person employed by any railroad or other company, corporation, individual or individuals, shall, on conviction thereof, be adjudged guilty of misdemeanor and punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for not less than ninety days nor more than one year, or by both such fine and imprisonment. [Approved Mar. 3, 1899; L. 1899, p. 34.]

§ 7094. Arson.—This act was held to not violate article 2, section 19 of the constitution, by reason of the title not

being broad enough to cover the entire provisions of the act: See *State v. Hall*, 24 Wash. 255, 64 Pac. 153.

§ 7103. Robbery Defined.

Every person who shall forcibly and feloniously take from the person of another, or from his immediate presence, any article of value, by violence or putting in fear, shall be deemed guilty of robbery and upon conviction thereof shall be punished by imprisonment in the penitentiary for any length of time not more than twenty years nor less than five years. [Amendment, approved Feb. 5, 1903; L. 1903, p. 5.]

§ 7104. Burglary — Information.— An information charging defendant with unlawfully breaking and entering in the night-time the dwelling-house of another is sufficient under Ballinger's Code, section 7104, although it may add as descriptive of such dwelling-house that it was certain numbered rooms in a hotel, without alleging a lease thereof for a definite period: State v. Burton, 27 Wash. 528, 67 Pac. 1097.

Evidence.—In a prosecution for burglary a sufficient entry to sustain a conviction is shown, where it appears that a window was broken by one person, who reached in and removed stores from the building and handed them to another: State v. Boysen, 30 Wash. 338, 70 Pac. 740.

Accomplice.—An accomplice who takes goods handed him from a building by another who has effected a burglarious entry is liable as a principal: Id.

Description of premises.—Under Ballinger's Code, section 7104, which mentions a warehouse or any building in which goods, merchandise and valuable things are kept for use, sale, or deposit, as subjects of

burglary, an information which describes the place burglarized as a "warehouse building" comes properly within the terms of the statute: State v. Dolson, 22 Wash. 259, 60 Pac. 653.

A conviction upon an information charging the burglary of a warehouse is supported by evidence showing that the building entered was divided into a lodging-house and a warehouse, separate and apart from the lodging-house, used for the storage of goods, and that the room entered was in the part of the building devoted to warehouse purposes: Id.

§ 7108. Grand larceny—Information.— An information states facts sufficient to constitute the crime of cattle stealing, when it alleges that defendant "at the county of Spokane and state of Washington, then and there being, did then and there unlawfully and feloniously take, steal, carry and drive away two head of neat cattle then and there being, and which said two head of neat cattle were then and there the property of and belonging to one E. L. Wonch," etc.: State v. Barkuloo, 18 Wash. 142, 51 Pac. 350.

§ 7108a. Defining Larceny and Fixing Penalty.

Every person who shall feloniously take or steal from the person of another, without violence or putting in fear, any article of value, shall be deemed guilty of larceny from the person and, upon conviction thereof, shall be punished by imprisonment in the penitentiary not exceeding five years, or by fine in any sum not exceeding one thousand dollars, or by both such fine and imprisonment. [Approved Feb. 28, 1901; L. 1901, p. 34.]

§ 7119. Embezzlement by agent.—The fact that an agent is entitled to a commission upon goods consigned to him for sale the title of which is to remain in the consignor, would not give him a joint title with his consignor in the proceeds of sales to such an extent as to protect him from the operation of the statute making larceny by an agent a felony: Brandenstein v. Way, 17 Wash. 294, 49 Pac. 511.

Where goods are intrusted by one to another for the purpose of sale on commission, the goods or the money therefrom to be accounted for daily, and the amount of commission deducted from the moneys received and paid over to the one selling the goods, the relation between the parties is that of principal and agent, instead

of debtor and creditor, and where the party intrusted with the goods sells same and fails to turn over the proceeds of the sale over and above his commissions he is guilty of larceny by embezzlement: State v. Mains, 26 Wash. 160, 66 Pac. 431.

An information charging defendant, as the agent of an insurance company, with embezzling a promissory note, the property of said insurance company, sufficiently states the offense, under Ballinger's Code, section 7119, which provides that any agent or person to whom any money or other property shall be intrusted, who fraudulently converts the same to his own use, shall be deemed guilty of larceny: State v. Whitworth, 30 Wash. 47, 70 Pac. 254.

§ 7119a. Defining Larceny of Fixtures—Punishment.

Every person who shall sever from the freehold, steal, take and carry away any fixture or fixtures, attached to the real estate, or possessory claim of another, of the value of thirty dollars or more, shall be deemed guilty of grand larceny, and upon conviction thereof shall be punished by imprisonment in the penitentiary not more than fourteen years nor less than six months. Any person who shall sever from the freehold, steal, take and carry away, any fixture or fixtures attached to the real estate, or possessory claim of another, of a value of less than thirty dollars, shall be deemed guilty of petit larceny and upon conviction thereof shall be punished by imprisonment in the county jail for not more than one month, or by a fine not to exceed one hundred dollars, or by both fine and imprisonment, in the discretion of the court. [Approved Feb. 21, 1903: L. 1903, p. 12.]

§ 7123. Embezzlement of public funds. An information charging a city treasurer with making a profit out of public funds intrusted to him for safekeeping by receiving and accepting interest thereon from a certain bank, sufficiently charges a crime under section 57, Penal Code, which forbids public officers from using, in any manner not authorized by law, any portion of the money intrusted to them for safekeeping, in order to make a profit out of the same.

In a prosecution against an officer for making a profit out of public funds intrusted to his safekeeping, a verdict of guilty is warranted when it appears that he was treasurer of a certain city; that the money of the city was in his control; that he deposited the same with a certain bank, which gave defendant credit for interest on the city's money; that defendant had an individual account at the bank, to which credit for interest on the city's money was transferred by direction of

the bank president; and that defendant checked against said individual account to the amount of his deposit and of such interest credited to him, although he may have testified to his having no knowledge of the fact that such interest was being credited on his account, there being, however, circumstances tending to show knowledge on his part, such as a rapid increase of deposits soon after interest began to be credited and a corresponding increase in defendant's overdrafts on the bank in proportion as the interest deposits increased.

The fact that public moneys are deposited by a city treasurer in bank with no intent of making a profit out of them will not excuse such officer from penal liability, if he thereafter knowingly receives and appropriates to his own use the interest allowed on such deposits of public moneys: *State v. Boggs*, 16 Wash. 143, 47 Pac. 417.

[§§ 7126, 7127, repealed by act of Mar. 16, 1901; Laws, 1901, p. 262.]

§ 7128. Forgery—"Other instrument in writing."—Under section 63, Penal Code, defining forgery and enumerating the subjects thereof, the use of the words, "other instrument in writing," cannot be construed to include a mere account or statement of indebtedness of one person to another: *State v. Heaton*, 17 Wash. 310, 49 Pac. 493.

Under section 63, Penal Code, defining forgery as the act of "every person who shall falsely make, . . . forge or counterfeit . . . any record, deed, will, codicil, bond, writing obligatory, promissory note for money or property, receipt for property . . . or assignment of any bond, writing obligatory, or promissory note for money or property, or any other instru-

ment in writing," the clause, "or any other instrument in writing," has assignment as its antecedent, and must be construed as meaning instruments of like character with "bond, writing obligatory or promissory note": *Id.*

Indorsement of county warrant.—Falsely writing the name of the payee of a county warrant upon the back of the warrant as an indorsement constitutes the crime of forgery, under Penal Code, section 63 (Bal. Code, § 7128), which provides that: "Every person who shall falsely make, . . . alter, forge or counterfeit . . . any writing obligatory, . . . auditor's warrant . . . county order . . . or assignment of any writing obligatory . . . or any other instrument in writing . . . with intent to

defraud, shall be deemed guilty of forgery." Uttering or publishing as true any such instrument, knowing the same to be false or forged, with intent to defraud, is also forgery: State v. Barkuloo, 18 Wash. 52, 50 Pac. 1102.

Drafts.—Ballinger's Code, section 7128 (Penal Code, § 63), comprises within its purview the crime of uttering forged drafts, as well as the crime of forging that character of written instruments: State v. Harding, 20 Wash. 556, 56 Pac. 399, 929.

§ 7144a. Malicious Injury to Trees and Shrubs.

Whoever digs up, cuts down, girdles, defaces, or otherwise injures or mars any tree or shrub on any public highway, bicycle path, park or any public grounds used as a place of public resort, unless the same is deemed an obstruction by the road supervisor or person lawfully in charge of such highway, bicycle path, park or public grounds and removed under his or their direction, shall be deemed guilty of a misdemeanor, and be fined in any sum not less than five dollars nor more than one hundred dollars and the costs of prosecution. [Approved Mar. 18, 1901; L. 1901, p. 301.]

§ 7144b. Malicious Injury to Personal Property.

Any person who shall unlawfully or maliciously injure or destroy the personal property of another shall be deemed guilty of a misdemeanor and on conviction thereof shall be fined in any sum not exceeding \$100.00, or shall be committed to the county jail for a period not exceeding thirty (30) days. [Approved Feb. 21, 1903; L. 1903, p. 13.]

§ 7155a. Obliterating Marks and Brands on Logs and Timbers.

Every person who shall cut out, alter or destroy any mark or brand made or caused to have been made by the owner upon any log, spar, pile, boom stick, shingle bolt or other timber of value, lying or being in any of the waters of this state, or upon the beach or bank adjacent to such waters, without the consent of the owner thereof, shall, on conviction, be punished by a fine of not more than one hundred dollars, or by imprisonment in the county jail of not more than six months or by both such fine and imprisonment. [Approved Mar. 1, 1901; L. 1901, p. 40.]

§ 7162. Removal of Mortgaged Property.

That when any real estate in this state is subject to, or is security for, any mortgage, mortgages, lien or liens, other than general liens arising under personal judgments, it shall be unlawful for any person who is the owner, mortgagor, lessee, or occupant of such real estate to destroy or remove or to cause to be destroyed or removed from said real estate any fixtures, buildings, or permanent improvements, not including crops growing thereon, without having first obtained from the owners or holders of each and all of such mortgages or other liens his or their written consent for such removal or destruction.

Any person willfully violating the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment in the county jail for a period not to exceed six months, or by a fine of not more than five hundred dollars, or by both such fine and imprisonment. [Approved Mar. 13, 1899; L. 1899, p. 122.]

§ 7163. Malicious Interference with Irrigation Devices.

Any person who shall tamper with, alter, change or in any wise interfere with any headgate, measuring box, dam or other device used for diverting, measuring or distributing any water for irrigating, stock or domestic purposes after the same shall have been regulated, fixed or adjusted by any sheriff or other proper authority, shall be guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not less than ten nor greater than one hundred dollars.

Whenever any such headgate, measuring box, dam or other device shall be altered, changed or tampered with after having been adjusted by such sheriff or other proper authority, so as to cause a greater quantity of water to flow into or through any irrigating or other ditch or canal, the person occupying, using or operating the lands or premises whereon such waters are used shall be prima facie guilty of violating the provisions of section 1 of this act. [Approved Feb. 28, 1901; L. 1901, p. 35.]

§ 7164. Malicious Destruction of Improvements on Public Lands.

If any person shall maliciously or wantonly destroy or deface any cabin or other building or place of shelter or any of the contents of such cabin, building or shelter constructed by any person or persons or society of persons upon any public land of the state of Washington, or of the United States within the state of Washington, or upon any land not owned by such person so destroying or defacing the same, he shall be deemed guilty of a misdemeanor: Provided, That the provisions of this act shall not apply to bona fide settlers on government lands.

Malicious Destruction or Removal of Records and Instruments of Government of State or United States.

If any person shall maliciously or wantonly remove, destroy or carry away any record or record book or document of any kind or any box or other receptacle for containing the same or any instrument or device for scientific purposes established or placed upon any mountain peak or summit or at any other place of resort, or upon any land belonging to this state or to the United States, or in or upon any body or stream of water within this state, such person shall be deemed guilty of a misdemeanor.

Punishment.

Every person convicted of a violation of any of the provisions of this act shall be punished by a fine of not less than ten dollars nor more than one hundred dollars or by imprisonment in the county jail not less than ten days nor more than six months or by both such fine and imprisonment. Any person acting as informer, in case of conviction under this act, shall be entitled to one-half of the fine imposed. [Approved Mar. 13, 1899; L. 1899, p. 186.]

§ 7164a. Malicious Destruction of Electric Property.

It shall be unlawful for anyone within the state of Washington to willfully or wantonly and without the consent of the owner, take down, remove, injure,

obstruct, displace or destroy any line erected or constructed, for the transmission of electrical current, or any poles, wires, conduits, cables, insulators, or any support upon which wires or cables may be suspended, or any part of any such line or appurtenances or apparatus connected therewith; or to sever any wire or cable thereof, or in any manner to interrupt the transmission of the electrical current over and along any such line; or to take down, remove, injure, or destroy any house, shop, building or other structure or machinery connected with or necessary to the use of any line erected, or constructed for the transmission of electrical current. [As amended by act of March 16, 1903; L. 1903, p. 198.]

Wantonly Putting out Fire Which Results in Injury to or Destruction of Electric Property.

It shall be unlawful for any person within the state of Washington to willfully or wantonly set any fire that shall result in the destruction or injury of any line erected or constructed for the transmission of electrical current or any poles, conduits, wires, cables, insulators, or any support upon which wires or cables may be suspended, or any part of any such line, or appurtenances or apparatus connected therewith, or any house, shop, building or other structure or machinery connected with or necessary to the use of any line erected or constructed for the transmission of electrical current, or to set any fire that shall in any manner interrupt the transmission of electrical current over and along any such line. [As amended by act of March 16, 1903; L. 1903, p. 198.]

Punishment.

Any person or persons violating any of the provisions of sections one and two of this act, shall, upon conviction thereof, be punished by a fine not exceeding five hundred dollars, or imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment in the discretion of the court. [As amended by act, approved Mar. 16, 1903; L. 1903, p. 198.]

§ 7164b. Malicious Destruction of or Injury to Booms.

Any person who shall willfully and maliciously break, cut away, injure or destroy any boom lawfully established and being in any of the waters of this state, or make any cut or break in the same with intent to destroy the same, shall be deemed guilty of a felony, and on conviction thereof shall be punished by imprisonment in the state penitentiary for any term not exceeding five years. [Approved Feb. 28, 1901; L. 1901, p. 22.]

§ 7164c. Malicious Destruction of Mileboards and Posts.

Any person or persons who shall deface, mutilate, tear down or destroy any signboard or post, or any mileboard or post, erected or set up by the authorities of any city, town or county, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine in any sum less than twenty dollars, or by imprisonment in the county jail not exceeding twenty days, or both.

Protection of Private Boards or Posts for Advertising.

Any person, firm, company or corporation desiring to erect or set up signboards or posts, or mileboards or posts, as a means of advertising, and desiring to have the protection of the provisions of the foregoing sections in so doing, shall satisfy the proper officers of the city, town or county that said boards or posts will be set up at correct distances and at proper points and in all other respects be serviceable to the public as signboards or posts, or as mileboards or posts; whereupon said person, firm, company or corporation shall be permitted to place on said boards or posts the words "by authority," and the authorities granting such permission shall make a record of such action in the records of their proceedings; and any signboard or post, or any mileboard or post, set up by such permission, and having on its face in clear, bold letters the words "by authority," shall have the same protection on such boards or posts set up by the authorities of any city, town or county, and any person or persons who shall deface, mutilate, tear down or destroy any such board or post so set up shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine in any sum less than twenty dollars, or by imprisonment in the county jail not exceeding twenty days, or both. [Approved Feb. 28, 1901; L. 1901, p. 25.]

§ 7172a. Fraud and Deceit—False Representations by Corporation Officer:

Any superintendent, director, secretary, manager, agent, or other officer of any corporation formed or existing under the laws of this state, or transacting business in this state, or any person pretending or holding himself out as such superintendent, director, secretary, manager, agent or other officer, who shall willfully subscribe, sign, indorse, verify or otherwise assent to the publication, either generally or privately, to the stockholders or to other persons dealing with such corporation, or its stock, any willfully untrue or willfully and fraudulently exaggerated report, prospectus, account, statement of operations, values, business profits, expenditures, or prospects, or other paper or document intended to produce or give, or having a tendency to produce or give, to the shares of stock in such corporation a greater value than they really possess, or with the intention of defrauding any particular person or persons, or the public or persons generally, shall be deemed guilty of an offense against the laws of the state of Washington, and, upon conviction thereof, shall be punished by imprisonment in the penitentiary, not less than one nor more than five years, or in the county jail not more than one year, or by a fine not exceeding two thousand dollars or by both. [Approved Mar. 14, 1903; L. 1903, p. 141.]

§ 7173a. Fraudulent Sales of Seeds.

That any person or persons doing business in this state who shall knowingly sell seed, or offer for sale any vegetable seed that are not plainly marked upon each package or bag containing such seed the year in which said seed were grown, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than fifty dollars, or imprisoned not more than thirty days for each and every offense.

That any person or persons who shall, with intention to deceive, wrongly mark or label, as to date, any package or bag containing garden or vegetable seed shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than ten nor more than fifty dollars, or imprisoned not less than ten nor more than thirty days.

That this act shall take effect and be in force from and after the first day of January, 1902. [Approved Mar. 18, 1901; L. 1901, p. 325.]

§ 7178. Obtaining Food and Lodging by Fraudulent Pretense.

A person who obtains any food, lodging or accommodation at a hotel, boarding-house or lodging-house without paying therefor, with intent to defraud the proprietor or manager thereof, or who obtains credit at a hotel, boarding-house or lodging-house by the use of any false pretense, or who, after obtaining board, lodging or accommodation at a hotel, boarding-house or lodging-house, absconds or surreptitiously removes his baggage therefrom without paying for his food, lodging or accommodations, is guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not less than ten dollars (\$10) nor more than fifty dollars (\$50) or imprisonment in county jail not less than ten days nor more than sixty days. [Approved Mar. 6, 1899; L. 1899, p. 38.]

Punishment.

A person who obtains any food, lodging or accommodation at a hotel, boarding-house, restaurant, or lodging-house, without paying therefor, with intent to defraud the proprietor or manager thereof, or who obtains credit at a hotel, boarding-house, or lodging-house by the use of false pretense, or who after obtaining board, lodging or accommodations at a hotel, boarding-house, restaurant, or lodging-house, absconds or surreptitiously removes his baggage therefrom without paying for his food, lodging or accommodation, is guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not less than ten dollars nor more than fifty dollars, or imprisonment in the county jail not less than ten nor more than thirty days.

Prima Facie Proof of Defense.

Proof that lodging, food or other accommodation was obtained by false pretense or by false or fictitious sham or pretense of any baggage or other property, or that the person refused or neglected to pay for such food, lodging or other accommodation on demand, or that he gave in payment for such food, lodging or other accommodation bank check or draft on which payment was refused, or that he absconded without paying or offering to pay for such food, lodging or other accommodation, or that he surreptitiously removed or attempted to remove his baggage shall be prima facie proof of the fraudulent intent mentioned in section 1. [Approved Mar. 16, 1903; L. 1903, p. 244.]

§ 7222. Tampering with Witnesses.

If any person shall willfully and corruptly hinder, prevent, or endeavor to hinder, or prevent, any person from appearing before any court of justice as a witness, or from giving evidence, in any action or proceeding, with intent there-

by to obstruct the course of justice, he shall be deemed guilty of the misdemeanor of tampering with a witness, and, upon conviction thereof, shall be punished by imprisonment in the county jail for any period not exceeding one year, or by fine not exceeding one thousand dollars, or both, in the discretion of the court. [Approved Feb. 13; 1901; L. 1901, p. 14.]

§ 7229. **Incest.**—Sexual intercourse with—~~by~~ accomplished with or without the consent in the degrees of consanguinity prohibited of the female: State v. Nugent, 20 Wash. by Ballinger's Code, section 7229, is in- 522, 72 Am. St. Rep. 133, 56 Pac. 25. cest, whether the act of intercourse is

§ 7238a. **Conniving by Husband for Wife's Prostitution.**

Every man who by force, intimidation, threats, persuasion, promises, or any other means, places or leaves, or procures any other person or persons, to place or leave, his wife in a house of prostitution, or connives at, or consents or permits, the placing or leaving of his wife in a house of prostitution, or allows or permits her to remain therein, is guilty of a felony, and shall be punished, upon conviction thereof, by imprisonment in the penitentiary for not less than one year or more than ten years; and in all prosecutions under this section the wife shall be a competent witness against her husband.

Procurement of, and Subsisting upon Earnings of Prostitution.

Any male person who lives with, or who lives off of, in whole or in part, or accepts any of the earnings of a prostitute, or connives in or solicits or attempts to solicit any male person or persons to have sexual intercourse, or cohabit with a prostitute, or who shall invite, direct or solicit any person to go to a house of ill-fame for any immoral purpose; or any person who shall entice, decoy, place, take or receive any female child or person under the age of eighteen years, into any house of ill-fame or disorderly house, or any house, for the purpose of prostitution; or any person who, having in his or her custody or control such child, shall dispose of it to be so received, or to be received in or for any obscene, indecent or immoral purpose, exhibition or practice, shall be deemed guilty of a felony and upon conviction thereof shall be imprisoned in the penitentiary not less than one year nor more than five years, and fined in any sum not less than one thousand dollars nor more than five thousand dollars. [Approved Mar. 16, 1903; L. 1903, p. 230.]

§ 7251. **Sunday law.**—Ballinger's Code, section 7251, making it unlawful for any person to open on Sunday for the purpose of trade, or sale of goods, wares and merchandise, any shop, store or building or place of business whatever, with certain exceptions, and providing that the law shall apply to hotels only in so far as the sale of intoxicating liquors is concerned, does not impliedly repeal the earlier enactment of section 7250: State v. Binnard, 21 Wash. 349, 58 Pac. 210.

The enactment of Sunday laws, requiring the cessation of labor on the score of the physical and moral well-being of society, is an appropriate exercise of the police power of the state: State v. Nichols, 28 Wash. 628, 69 Pac. 771.

Is a legitimate exercise of the police

power, and does not violate the constitutional prohibition against depriving a person of his property, without due process of law, nor is it an invasion of his constitutional right to the enjoyment of life, liberty and property: Id.

The proviso to Ballinger's Code, section 7251, excepting from the operation of the statute hotels, drugstores, livery-stables and undertakers does not violate the constitutional prohibition against the passage of laws granting to one class of citizens privileges or immunities which shall not equally belong to all citizens, since there is no restriction on any person engaging in the excepted lines of business and thus obtaining equal advantages with all others engaged therein: Id.

§ 7251a. Barbering on Sunday.

That it shall be unlawful for any person, persons or corporation to carry on the business of barbering on Sunday.

Any person or persons violating the provisions of this act shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of ten dollars or imprisonment in the county jail for five days for the first offense, and by a fine of not less than twenty-five dollars nor more than fifty dollars, or imprisonment in the county jail for not less than ten days nor more than twenty-five days for the second and each subsequent offense. [Approved Mar. 7, 1903; L. 1903, p. 68.]

§ 7258. Employing females in saloon.—In an information charging defendant with employing a female person in a saloon, beer-hall, bar-room, theater or place of amusement, where intoxicating liquors are sold as a beverage, it is unnecessary to state the name of the female so employed by defendant, where no timely objection is made by the defendant, as the gravamen of the offense is the employment of a female person in a place prohibited by statute. A law forbidding the employment of females in places where intoxicating liquors are sold as a beverage is a prohibition on contracts against good morals,

and clearly within legislative power, and is not in violation of the constitutional inhibition against abridging the privileges or immunities of citizens or depriving them of liberty and property without due process of law: *State v. Considine*, 16 Wash. 358, 47 Pac. 755.

§ 7259. Sale of lottery tickets.—The provision in Penal Code, section 139, permitting lotteries for charitable purposes, although enacted prior to the framing of the constitution, falls within the constitutional prohibition against lotteries, and is therefore invalid: *Seattle v. Chin Let*, 19 Wash. 38, 52 Pac. 324.

§ 7270. Maintaining Gambling Resorts.

Any person who shall conduct, carry on, open, or cause to be opened, either as owner, proprietor, employee, or assistant, or in any manner whatever, whether for hire or not, any game of faro, monte, roulette, rouge et noir, lansquenette, rondo, vingt-un (or twenty-one), poker, draw-poker, brag, bluff, thaw, tan, or any banking or other game played with cards, dice or any other device, or any slot machine, or other gambling device, whether the same be played or operated for money, checks, credits, or any other representative or thing of value, in any house, room, shop, or other building whatsoever, boat, booth, garden or other place, where persons resort for the purpose of playing, dealing or operating any such game, machine or device, shall be guilty of a felony, and upon conviction thereof shall be imprisoned in the penitentiary for the period of not less than one nor more than three years. [Approved Mar. 7, 1903; L. 1903, p. 63.]

§ 7271. Maintaining Nickel-in-the-Slot Machines.

Any person or persons who shall conduct, maintain, exhibit in a public place or operate either as owner or owners, proprietor or proprietors, lessee or lessees, employee or employees, agent or agents any nickel-in-the-slot machine or other device of like character, wherein there enters an element of chance, whether the same be played or operated for money, checks, credits, or any other representative of value, or for any property or thing of value whatever, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than ten dollars, nor more than one hundred dollars, and in default of the

payment of the fine imposed shall be imprisoned in the county jail one day for each two dollars thereof. [Amendment of 1903; L. 1903, p. 65; approved Mar. 7, 1903.]

§ 7272. Prima Facie Evidence of Offense.

For the purposes of trial and conviction under this act the possession of any such machine or device or keeping the same in any place accessible to the public shall be prima facie evidence against the person in possession thereof of guilt under this act.

Fines for, How Appropriated.

Any fine imposed under this act shall be paid into the county treasury of the county wherein such conviction was secured, for the benefit of the school fund.

All acts and parts of acts in conflict herewith are hereby repealed. [Approved Mar. 18, 1901; L. 1901, p. 311.]

Repealed by L. 1903, Laws 67.
§ 7287a. Child Labor.

No female person under eighteen years of age shall be employed as public messenger by any person, telegraph company, telephone company, or messenger company in this state, nor shall any child of either sex under the age of fourteen years be hired out to labor in any factory, mill, workshop or store at any time, provided that any superior court judge, living within the residence district of any such child, may issue a permit for the employment of any child between the ages of twelve and fourteen years at any occupation, not in his judgment, dangerous or injurious to the health or morals of such child, upon evidence, satisfactory to him, that the labor of such child is necessary for its support or for the assistance of any invalid parent. Such permits shall be issued for a definite time but shall be revocable at the discretion of the judge by whom they are issued.

Punishment.

Any employer, overseer, superintendent, or agent of such employer, who shall violate any of the provisions of this act shall, upon conviction thereof, be fined for each offense not less than \$50 nor more than \$100, or be imprisoned in the county jail not exceeding one month. [Approved Mar. 16, 1903; L. 1903, p. 261.]

§ 7287b. Violating Quarantine—Punishment for.

Whenever a house has been quarantined by the board of health in any city or towns in this state, it shall be unlawful for any person, without the permission of the health officer, to leave the said house.

Any person violating the provisions of this act, shall be deemed guilty of a misdemeanor and shall be fined in any sum not exceeding one hundred dollars, or imprisoned in the county jail for a period of thirty days, or both such fine and imprisonment. [Approved Mar. 6, 1901; L. 1901, p. 59.]

§ 7293. Obstructing public highway—Evidence—Establishment by prescription—Instructions.—The fact of the existence of a public highway may be established by any competent evidence, and, in a prosecution for its obstruction, there is no compulsion upon the state to elect whether it would rely upon the establishment of the highway by prescription, dedication, user, or the order of the county commissioners. In a prosecution for maintaining a public nuisance by constructing a fence across a public highway, a letter from the county commissioners to defendant agreeing to a change in the road as proposed by defendant, if he could get all interested parties to agree, is inadmissible for the purpose of showing good faith and negating willful obstruction by the defendant, when there is no showing that he had complied with the terms of the let-

ter. Where proof of the use by the public of a highway over defendant's land has been confined to acts and declarations, it is not error to refuse to allow defendant to state whether or not he had consented to the use of the highway. The character of a road as a public highway, established by prescription, is not affected by immaterial changes and alterations in the travel over it by the public. In a prosecution for obstructing a public highway which the evidence shows had been established by public user for a period of fifteen years, an instruction that the jury must find from seven to ten years' user by the public is not prejudicial, in view of the evidence, when other instructions clearly show the length of time essential to establish a highway by prescription: *State v. Horlacher*, 16 Wash. 325, 47 Pac. 748.

§ 7323. Barratry—Penalties.

If any person shall willfully instigate, maintain, excite, prosecute or encourage the bringing of any suit or suits at law or in equity, in which such person has no interest, in any court of this state, with intends [intent] to distress or harass the defendant therein, or shall willfully bring or prosecute any false suit or suits of his own, at law or in equity, with intent to distress the defendant therein, or if any attorney or counselor at law shall seek to obtain employment to prosecute or defend in any suit or case at law or in equity by means of personal solicitation of such employment or by procuring another to solicit such employment for him or shall by himself or another seek or obtain such employment by giving to the person from whom such employment is sought, money or any other thing of value, or shall directly or indirectly pay the debts or liabilities of the person from whom such employment is sought, or loan or promise to give, loan or otherwise grant money or other valuable thing to the person from whom such employment is sought, before such employment, shall be deemed guilty of barratry, and shall upon conviction be punished by a fine in any sum not exceeding five hundred dollars, and may in addition thereto be imprisoned in the county jail not exceeding three months. The term attorney at law shall include counselor at law, and any attorney at law violating any of the provisions of this act shall, in addition to the penalty hereinbefore provided, forfeit his right to practice in this state, and shall have his license revoked and be disbarred in the manner provided by law for dishonorable conduct or malpractice, whether he has been convicted for violating this act or not. [Amendment, approved Mar. 9, 1903; L. 1903, p. 68.]

§ 7345. Game Law.

Every person who shall at any time, within the state of Washington, hunt, pursue, take, kill, injure, or destroy any female of the moose, elk, caribou, antelope, mountain sheep or mountain goat species, or who shall at any time between the first day of November of any year and the first day of September of the

following year, hunt, pursue, take, kill, injure or destroy any male of the moose, elk, caribou, antelope, mountain sheep or mountain goat species, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished as hereinafter provided. [Amendment, approved Mar. 18, 1901; L. 1901, p. 279.]

§ 7346. Game—Closed Season for Deer.

Every person who shall, within the state of Washington, at any time between the fifteenth day of December of any year and the fifteenth day of September of the following year, hunt, pursue, take, kill, injure or destroy any deer, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished as hereinafter provided. [Amendment, approved Mar. 14, 1899; L. 1899, p. 277.]

§ 7347. Use of Dogs Prohibited.

Every person who shall at any time pursue, take, kill, injure or destroy any moose, elk, caribou, antelope, mountain sheep or goat, or deer with dogs, or knowingly allow dogs to chase or destroy said animals, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished as hereinafter provided: Provided, That the provisions of this section shall not apply in the counties of the state lying westward of the eastern boundary of the counties of Whatcom, Skagit, Snohomish, King, Pierce, Lewis and Skamania, between the first day of October and the first day of November of each year. [Amendment, approved Mar. 14, 1899; L. 1899, p. 278.]

§ 7348. Number of Deer Permitted to be Slain.

Every person who shall, within the state of Washington, during the season when it is lawful to kill the same, kill more than four deer or more than one male of the elk, moose, or antelope, or more than two males of the caribou, mountain sheep or mountain goat species or who shall kill any spotted fawn, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished as hereinafter provided. [Amendment, approved Mar. 18, 1901; L. 1901, p. 279.]

§ 7351. Game Birds—Closed Season for.

Every person who shall hunt, pursue, take, kill, injure or destroy any grouse, partridge, prairie chickens, sage hen, native pheasant, or ptarmigan between the first day of December of any year and fifteenth day of August of the following year, shall be guilty of a misdemeanor and upon conviction thereof shall be punished as hereinafter provided: Provided, That in all counties lying east of the western boundary of the counties of Okanogan, Chelan, Kittitas, Yakima and Klickitat it shall be unlawful to hunt, pursue, take, kill, injure or destroy any prairie chicken or sage hen between the fifteenth day of November of any year and the fifteenth day of September of the following year: Provided further, That in the counties of Kittitas and Yakima it shall be unlawful to hunt, pursue, take, kill, injure or destroy any prairie chickens or sage hen from and after the passage of this act and before the fifteenth day of August, 1903.

Provided further, That no quail shall be killed until 1902. [Amendment, approved Mar. 16, 1901; L. 1901, p. 233.]

§ 7351a. Punishment for Violations—Limit of Number Allowed to be Killed.

Every person who shall hunt, pursue, take, kill, injure or destroy any grouse, partridge, prairie chicken, sage hen, native pheasant or ptarmigan, between the first day of December of any year and the 15th day of August of the following year shall be guilty of a misdemeanor, and upon conviction thereof shall be punished as hereinafter provided: Provided, That no person shall kill on one day more than ten of the game birds mentioned in this section: Provided further, That in the counties of Kittitas and Yakima it shall be unlawful to hunt, pursue, take, kill or destroy any prairie chickens, sage hen from and after the passage of this act and before the 15th day of August, 1903. [Amendment, approved Mar. 12, 1903; L. 1903, p. 95.]

§ 7352. Game Law—Closed Season for Birds.

Every person who shall hunt, take, kill, injure or destroy any swan, sand-bill crane, mallard duck, canvas back duck, widgeon, teal, wood duck, spoonbill, gray or black duck, sprigtail, or other game duck, rail, plover, or other game water fowl, between the first day of March and the 15th day of August of any year, shall be guilty of a misdemeanor and upon conviction thereof shall be punished as hereinafter provided: Provided, That no person shall on any one day kill more than twenty-five of the game birds mentioned in this section. [Amendment, approved Mar. 18, 1901; L. 1901, p. 280.]

§ 7356. Sale of Game Prohibited.

Every person who shall offer for sale or market, or sell or barter any moose elk, caribou, killed in this state, antelope, mountain sheep or goat, deer, or the hide or skin of any moose, elk, deer or caribou, or any grouse, pheasant, ptarmigan, partridge, sage hen, prairie chicken or quail at any time of the year, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished as hereinafter provided. [Amendment, approved Mar. 14, 1899; L. 1899, p. 278.]

§ 7357. Unlawful to Buy Game.

Every person, agent or employee of a company or corporation, hotel-keeper, restaurant keeper, boarding-house keeper, or keeper of a market, or other person who shall buy or barter for, at any time of the year, the whole or any part of the meat of any moose, elk, caribou, antelope, mountain sheep or goat, deer, or the hide or skin of any moose, elk, deer or caribou, or any grouse, pheasant, ptarmigan, partridge, sage hen, prairie chicken or quail, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished as hereinafter provided. [Amendment, approved Mar. 14, 1899; L. 1899, p. 278.]

§ 7358. Export of Game Prohibited.

Every steamboat company, railroad company, express company, or other common carrier, their officers, agents and servants and every other person who shall transfer, carry or take out of this state, or who shall receive for the purpose of transferring from this state any of the wild game birds or animals enumerated in this act, shall be guilty of a misdemeanor and upon conviction thereof shall be punished as hereinafter provided: Provided, however, That upon the granting of a similar privilege by the legislature of the state of Oregon or Idaho to the citizens or residents of the state of Washington, nothing in this section shall be construed to prevent any citizen or resident of the state of Oregon or Idaho from personally taking with him any game to the limit of one day's hunt, killed by himself, in the state of Washington, when it is lawful to take and kill the same; but this provision shall be strictly construed, and the burden of the proof shall be upon the person taking with him such game to establish the fact that the same was personally killed by himself: Provided, That nothing in this section shall be construed to prevent any steamboat company, express company, railroad company, or other common carrier, their officers, agents and servants, from receiving any of the game birds or animals enumerated in this act from transferring them from one point to another point within this state when said game birds or animals are accompanied by the affidavit of the shipper that the same is not shipped for sale or profit. [Amendment, approved Mar. 18, 1901; L. 1901, p. 280.]

§ 7359. Birds not to be Killed—Exceptions.

Every person who shall hunt, pursue, take, kill, injure, or destroy any imported or Oriental pheasant, golden, silver, ring-necked, copper, bronze, Chinese or Mongolian pheasant, or California, valley or mountain quail, or bob-white quail, between the first day of December of any year and the fifteenth day of August of the following year, shall be guilty of a misdemeanor and upon conviction shall be punished as hereinafter provided: Provided, That it shall be unlawful to hunt, pursue, take, kill, injure or destroy any of the birds named in this section in any of the counties lying east of the western boundary of the counties of Okanogan, Chelan, Kittitas, Yakima and Klickitat from and after the passage of this act and before the fifteenth day of August, 1905. [Amendment, approved Mar. 16, 1901; L. 1901, p. 234.]

§ 7359, repealed by act of 1901, c. 138, p. 234.]

§ 7362a. Song Birds and Nests Protected.

Prohibits Catching, Killing or Having—Defines Game Birds.

No person shall, within the state of Washington, kill or catch or have in his or her possession, living or dead, any wild bird other than a game bird, or purchase, offer to expose for sale, transport or ship within or without the state, any such wild bird after it has been killed or caught, except as permitted by this act. No part of the skin, plumage or body of any wild bird protected by this section shall be sold or had in possession for sale. For the purposes of this act the following only shall be considered game birds: The anatridae, commonly

known as swans, geese, brant, and river and sea ducks; the rallidae, commonly known as rails, coots, mud hens and gallinules; the limicolae, commonly known as shore birds, plovers, surf birds, snipe, sand-pipers, tattlers and curlews; the gallinae, commonly known as grouse, prairie chickens, pheasants, partridges and quail.

Prohibits Destruction of Eggs of Birds Other Than Game.

No person shall, within the state of Washington, take or needlessly destroy the nest or the eggs of any wild bird other than a game bird, or have such nest or eggs in his or her possession, except as permitted by this act.

Punishment for Violations.

Any person who violates any of the provisions of this act shall be guilty of a misdemeanor, and shall be liable to a fine of not less than ten nor more than one hundred dollars for each offense and an additional fine of one dollar for each bird, living or dead, or part of bird or nest, or set of eggs, or part thereof, possessed in violation of this act, together with the costs of prosecution in such action, or to imprisonment for thirty days in the county jail, or both, at the discretion of the court. All fines collected under the provisions of this act shall be turned over to the treasurer of the county in which such action is brought, and by him placed in the game protection fund.

Exemptions from Act.

Sections 1, 2 and 3 of this act shall not apply to any person holding a certificate giving the right to take birds, their nests or eggs for scientific purposes, as provided for in section 5 of this act.

Certificates to Scientists.

Certificates shall be granted by the state game warden, or by any incorporated society of natural history in the state, through such persons or officers as said society may designate, to any properly accredited person of the age of fifteen years or upward, permitting the holders thereof to collect birds, their nests or eggs, for strictly scientific purposes only. In order to obtain such certificate the applicant for the same must present to the person or persons having the power to grant said certificate, written testimony from two well known scientific men, certifying to the good character and fitness of said applicant to be intrusted with such privilege, must pay to said person or officers, one dollar, to defray the necessary expenses attending the granting of such certificates, and must file with said person or officers a properly executed bond, in the sum of two hundred dollars, signed by two responsible citizens of the state as sureties. On proof that the holder of such a certificate has killed any bird, or taken the nest or eggs of any bird, for other than scientific purposes, this bond shall be forfeited to the state, and the certificate becomes void, and he shall be further subject for each such offense to the penalties provided therefor in section 3 of this act.

Duration of Certificates.

The certificates authorized by this act shall be in force one year only from the date of issue, and shall not be transferable.

Exceptions as to Certain Enumerated Birds not Game.

The English or European house sparrow, jays, magpies and chicken hawks, are not included among the birds protected by this act, and the provisions of this act shall not apply to any person who shall kill any bird on his own inclosed premises while such bird is destroying fruit or grain.

All acts or parts of acts heretofore passed inconsistent with or contrary to the provisions of this act, are hereby repealed. [Approved Mar. 16, 1903; L. 1903, p. 256.]

§ 7363. Warden to be Appointed, etc.

The county commissioners of the respective counties in the state of Washington are hereby empowered and authorized to, and shall, upon application in writing of one hundred resident freeholders and taxpayers of said county, appoint a suitable person, who shall be a qualified elector and taxpayer of said county, as game warden for such county, who shall be vested with all the authority of a sheriff to perform the duties prescribed in the following section. Such game warden, so appointed, shall receive a salary of not more than fifty dollars (\$50) per month, to be paid in the same manner as other county officers. [Amendment, approved Mar. 18, 1901; L. 1901, p. 281.]

§ 7363a. Providing for Game Warden and Fixing Duties.

There is hereby created the office of state game warden, and the state fish commissioner shall be ex officio such officer.

Powers and Duties.

The state game warden shall have full control and supervision over all county game wardens appointed in pursuance to any statute now existing on the statute books of this state, and may have the power to appoint said county game wardens special deputy fish commissioners for the county in which said county game wardens may reside and shall have general supervision over the enforcement and execution of all laws of this state for the protection of game animals, game birds, song birds and game fish, and shall have all the authority and powers as a peace officer conferred on county game wardens by any law of this state.

Report to Governor.

The said state game warden in connection with his report as said fish commissioner, shall annually, on December first, report to the governor of this state a full account of his actions as said state game warden; also the operation and result of all laws pertaining to the protection of game animals, game birds and game fish.

Expenses, Payment of.

The expenses of the county game wardens may be paid in the discretion of the state game warden and state fish commissioner for all services performed by them as deputy fish commissioners, upon the request or direction of said state game warden and said state fish commissioner, and said expenses when so audited

and allowed are made payable out of the fish commissioner's traveling and incidental expense fund. [Approved Mar. 13, 1899; L. 1899, p. 276.]

§ 7364. Duty of Warden.

It is hereby made the duty of every game warden so appointed, and every sheriff, deputy sheriff, constable, city marshal and police officer, within their respective jurisdictions in the state of Washington, to enforce all the provisions of this act, and all laws for the protection of game birds and animals, fish and song birds, and such sheriffs, deputy sheriffs, constables, city marshals, police officers, or any forest rangers appointed by the United States government, and each of them, by virtue of their election and appointment, are hereby created and constituted ex-officio game wardens for their respective jurisdictions, and they and each of them, and each and every game warden so appointed, under the provisions of the preceding section, shall have authority, and it shall be their duty to inspect all depots, warehouses, cold storage rooms, storerooms, hotels, restaurants, markets and all packages or boxes, held either for storage or shipment, which they shall have reason to believe contain evidence of the infraction of any of the provisions of this act. And if, upon inquiry said officer discovers evidence sufficient in his judgment to secure a conviction of the offender, or shall have good cause to believe that sufficient evidence exists to justify the same, he shall at once institute proceedings to punish the alleged offenders. [Amendment, approved Mar. 18, 1901; L. 1901, p. 281.]

§ 7366. Warden to Make Arrests.

Any game warden appointed under the provisions of this act, any sheriff, deputy sheriff, city marshal, constable or police officer, forest ranger, may, without warrant, arrest any person by him found violating any of the provisions of this act, or any other act or acts hereafter enacted and enforced, at any time for the protection of game, fish and song birds, and take such person or persons before a justice of the peace or municipal judge having jurisdiction, who shall proceed without delay to hear, try and determine the matter, and give and enter judgment according to the allegations and proof. All such actions shall be brought in the name of the state of Washington and shall be prosecuted by the prosecuting attorney of the respective counties. [Amendment, approved Mar. 18, 1901; L. 1901, p. 282.]

§ 7366a. Hunters Must Procure License.

It is hereby prohibited and hereafter it shall be unlawful for any resident or nonresident of the state of Washington to hunt for, pursue, take, catch or kill any of the game animals, fowls or birds protected by the laws of this state during the open season when it is lawful to kill the same, without such person having in his possession at the time of such taking, catching or killing a license therefor, duly issued to him by the auditor of one of the counties of this state. The county auditor of each and every county in the state of Washington being hereby authorized to issue such license under the provisions of this

act. Such license shall be numbered and dated and shall contain name and post-office address of the person to whom such license is granted. All licenses provided for in this act shall be issued as follows: Upon application therefor by any person, either a resident or nonresident of this state, an annual license shall be issued to such person by the county auditor to whom such application shall be made for the purpose of hunting for, taking, catching or killing any of the game birds, animals or fowls protected by the laws of the state of Washington, and which said license shall entitle the holder to hunt for, pursue, take, catch or kill any of the game animals or birds within the county where such license is issued, during the open season when it is lawful to kill the same, for the term of one year, in any legal manner as provided by the laws of the state of Washington. The fee for such license shall be one dollar (\$1.00). The county auditor shall pay to the county treasurer all of such fees, to be placed in the game protection fund to be used by the county commissioners for the propagation and protection of game in said county. All fines collected under the provisions of this act shall be paid to the county treasurer of the county in which said fines are collected, and placed by him in the game protection fund.

Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction therefor, for each and every offense, shall be subject to a fine of not less than ten dollars (\$10) nor more than one hundred (\$100) dollars, together with the costs of prosecution; or imprisonment in the county jail where the offense is committed, of not less than five (5) days nor more than thirty (30) days or by both such fine and imprisonment in the discretion of the court.

All acts or parts of acts in conflict herewith are hereby repealed. [Approved Mar. 14, 1903; L. 1903, p. 142.]

§ 7371. Violations of Game Law—Establishing Rules of Taking Game, etc.

Deer and Caribou.

Every person who shall within the state of Washington, at any time between the fifteenth day of December and the fifteenth day of September of the following year, hunt, pursue, take, kill, injure, destroy, or possess any deer or caribou shall be guilty of a misdemeanor, and upon conviction thereof shall be punished as hereinafter provided. And every person who shall within the state of Washington during the season when it is lawful to kill the same take or kill more than four deer or who shall kill any spotted fawn shall be guilty of a misdemeanor, and upon conviction thereof shall be punished as hereinafter provided.

Female Elk, Moose, Antelope, Mountain Sheep, Mountain Goat.

Every person who shall at any time within the state of Washington, hunt, pursue, take, injure or kill any female of the elk, moose, antelope, mountain sheep or mountain goat species, or any person who shall between the first day of November of any year and the fifteenth day of September of the following year hunt, pursue, take, injure or kill any male of the moose, elk, caribou, antelope, mountain sheep or mountain goat species shall be guilty of a misdemeanor,

and upon conviction thereof shall be punished as hereinafter provided. Every person who shall within the state of Washington during the season when it is lawful to kill the same kill more than one male of the elk, moose, antelope, or caribou species, or more than two males of the mountain sheep or mountain goat species shall be guilty of a misdemeanor and upon conviction thereof shall be punished as hereinafter provided.

Grouse, Partridge, Prairie Hen, Sage Hen, Pheasant, Ptarmigan.

Every person who shall, within the state of Washington, hunt, pursue, take, kill, injure, destroy or possess any grouse, partridge, prairie chicken, sage hen, native pheasant or ptarmigan between the first day of January any [and] the first day of September of any year shall be guilty of a misdemeanor and upon conviction thereof shall be punished as hereinafter provided: Provided, That in the county of Kittitas it shall be unlawful to hunt, pursue, take, kill, injure, destroy or possess any prairie chicken between the first day of October of any year and the 10th day of September of the following year: Also provided, That in all the counties of the state of Washington lying east of the western boundary of the counties of Okanogan, Chelan, Kittitas, Yakima and Klickitat, it shall be unlawful to hunt, pursue, take, kill, injure, destroy or possess any of the game birds mentioned in this section between the 15th day of November and the fifteenth day of August of the following year.

Number Limited.

Every person who shall, during the season when it is lawful to hunt the same, kill more than ten prairie chickens, or ten grouse, partridge, sage hen, native pheasant or ptarmigan, Chinese or Mongolian pheasant, or more than fifteen quail of any kind in one day, shall be guilty of a misdemeanor and upon conviction thereof shall be punished as hereinafter provided: Provided, That in the county of Kittitas, during the season when it is lawful to hunt the same, no person shall in one day kill more than five (5) prairie chickens.

Swan, Goose, Brant, Sandhill Crane, Snipe, Duck.

Every person who shall hunt, pursue, take, kill, injure, destroy or possess any swan, goose, brant, sand-hill crane, snipe, mallard duck, canvasback back [duck], widgeon, teal [teal], wood-duck, spoonbill, gray or black duck, sprig-tail, or other game duck, whether named or mentioned herein or not, between the first day of March and the first day of September of any year shall be guilty of a misdemeanor and upon conviction thereof shall be punished as hereinafter provided.

Number Limited.

Every person who shall, within the state of Washington, during the season when it is lawful to hunt the same, kill more than twenty-five snipe, ducks, geese or brant in one day, shall be guilty of a misdemeanor and upon conviction thereof shall be punished as hereinafter provided: Provided, That the above-mentioned birds shall not be fired at from any gasoline or naphtha [naphtha] launch, steam launch, or other boat propelled otherwise than by hand.

Quail.

Every person who shall hunt, pursue, take, kill, injure, destroy or possess any California, valley or mountain quail, bob-white quail or other kind of quail, between the first day of January and the first day of October of any year shall be guilty of a misdemeanor, and upon conviction thereof shall be punished as hereinafter provided: Provided, That it shall be unlawful to hunt, pursue, take, kill, injure, destroy or possess any of the birds named in this section in any of the counties lying east of the western boundary of the counties of Okanogan, Chelan, Kittitas, Yakima and Klickitat from and after the passage of this act and before the fifteenth day of September, 1908.

Imported Pheasant, Imported Quail.

Every person who shall hunt, pursue, take, kill, injure, destroy or possess any imported or Oriental pheasant, golden, silver, ring-necked, copper, bronze, Chinese or Mongolian pheasant, or Chinese or Mongolian quail, from and after the passage of this act and before the fifteenth day of October, 1906, shall be guilty of a misdemeanor and upon conviction thereof shall be punished as hereinafter provided: Provided, That it shall [be] unlawful to hunt, pursue, take, kill, injure, destroy or possess any of the birds named in this section in any of the counties lying east of the western boundary of the counties of Okanogan, Chelan, Kittitas, Yakima and Klickitat, from and after the passage of this act and before the fifteenth day of September, 1908.

Killing for Sale Prohibited at any Time.

Any person who shall, within the state of Washington, at any time offer for sale or for market, or sell, or barter for, or exchange, any deer, moose, elk, caribou, mountain sheep or mountain goat species, or any kind of the various kinds of quail, Chinese or Mongolian pheasant, grouse, native pheasant, ptarmigan, prairie chicken, partridge, sage hen, or any wild duck, goose, swan, brant, sand-hill crane, snipe, rail or plover, or any other game bird shall be guilty of a misdemeanor and upon conviction thereof shall be punished as hereinafter provided: Provided, That during the month of November, in any year, wild ducks, geese, brant and snipe may be sold to the number permitted to be killed in any one day, as provided for in section 6 of this act.

Hotel Keepers, etc., Having in Possession.

Every person, company, partnership, firm or corporation, boarding-house keeper, hotel keeper, restaurant keeper, market keeper or cold storage plant, their owners, proprietors, officers, managers, agents or servants, who shall offer for sale or keep, or have in their possession at any time of the year any deer, moose, caribou, antelope, mountain sheep or mountain goat species, or any kind of the various kinds of quail, Chinese or Mongolian pheasant, grouse, native pheasant, ptarmigan, partridge, prairie chicken, sage hen or any kind of wild duck, goose, swan, brant, sand-hill crane, snipe, rail or plover or any portion of the meat of said animals or birds except ducks, geese, brant or snipe, during the month of November of each year shall be guilty of a misdemeanor. Possession of any of the animals or game birds mentioned or named herein, or any of the meat of

the same, except the number of ducks, geese, brant or snipe permitted to be taken during the month of November of any year, shall be presumptive evidence that said animals, birds, or the meat of the same was unlawfully taken by the person having possession of the same, and upon conviction thereof shall be punished as hereinafter provided: Provided, however, That any person may have in his possession the number and kinds of animals and birds permitted to be taken by this act during the time the same may be taken, provided the same were taken by the person so having them in his possession, or otherwise taken, as provided for in section 9 of this act.

Penalty.

Every person convicted of any of the misdemeanors defined in the foregoing sections of this act, except as otherwise provided for, shall be punished by a fine of not less than ten dollars (\$10) nor more than five hundred dollars (\$500), together with the costs of the prosecution of such action, and in default of the payment of such fine shall be imprisoned in the county jail one day for each two dollars (\$2) of such fine.

Disposition of Fines.

All moneys received and all fines collected under this act shall be paid to the treasurer of the county in which the suit, action or proceeding shall have been commenced and placed by him in the game protection fund to be used for the protection or propagation of game in said county, and the prosecuting attorney, justice of the peace or judge of any county, upon the payment of any fine or judgment, may satisfy the same of record for the state.

All acts and parts of acts in conflict with the provisions of this act are hereby repealed. [Approved Mar. 12, 1903; L. 1903, p. 94.]

§ 7397. For the Protection of Sturgeon—Closed Season.

Hereafter it shall not be lawful for any person or persons to take, capture or kill in the waters of the Columbia river or tributaries thereof any sturgeon between the first day of March and the first day of November in each and every year, under a penalty of twenty dollars for each and every sturgeon so taken, captured or killed, or had unlawfully.

§ 7398. Prohibits Taking Young Sturgeon Under Four Feet in Length.

It shall not be lawful at any time to take or kill any young sturgeon under four feet in length, or fish for the same by any device or appliance whatever in the waters of the Columbia river or tributaries thereof, and any person or persons fishing with gill nets, fish-wheels or other fishing apparatus whatever in the waters of the Columbia river or tributaries thereof who, on lifting, drawing, taking up or removing any of said nets, or other fishing apparatus, shall find young sturgeon under four feet in length entangled or caught therein, shall immediately, with care and the least possible injury to the fish, disentangle and let loose the same and transmit the fish to the water without violence. Any person or persons violating any of the provisions of this section, or having in their

possession young sturgeon under four feet in length, either for consumption or sale, or who is known to willfully destroy the same, for so offending shall, on conviction thereof, be punished with a fine of ten dollars for each and every fish so caught, sold or destroyed.

§ 7398a. Prohibits Use of Chinese Sturgeon Lines.

It shall be unlawful to cast, extend, set, use or continue to assist in casting, extending or using any Chinese sturgeon lines, or lines of a similar character, in the waters of this state. The fish commissioner and any deputies are hereby authorized to seize and destroy any such lines found in said waters, and they are hereby authorized to arrest forthwith any person or persons detected in setting or using any Chinese sturgeon lines, or lines of similar character, in the waters of this state. Any person violating any of the provisions of this section shall be fined in a sum not less than twenty-five dollars and not more than one hundred dollars. [Approved Mar. 13, 1899; L. 1899, p. 271.]

§ 7399a. For the Protection of Bass; Perch, Pickerel, and Pike.

It shall not be lawful for any person or persons to take, capture, catch or kill in any of the lakes or streams in this state, or have in their possession after the same has been taken, captured, caught or killed, any bass, perch, pickerel or pike, between the 15th day of May, and the 1st day of July of each and every year.

It shall not be lawful at any time to take, capture, catch or kill any bass, perch, pickerel or pike in any of the lakes or streams of this state by the use of any device or in any other manner than with hook and line.

Upon conviction of any violation of this act, the person or persons so convicted shall be punished by a fine of not less than ten dollars nor more than fifty dollars. [Approved Mar. 18, 1901; L. 1901, p. 324.]

Approved Mar. 23, 1903, L. 1903, p. 54.
§ 7399b. For the Protection of Trout in Chelan County.

It shall not be lawful for any person or persons to take, capture, catch or kill from any of the lakes or streams within the county of Chelan, or to have in their possession after the same have been taken, captured, caught or killed, any trout between the 15th day of April and the 1st day of June of each year.

Any person violating the provisions of this act shall be guilty of a misdemeanor and subject to a fine of not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100).

All other laws relating to the close season for trout and other game fish shall be inoperative in the said county of Chelan after the passage of this act.

An emergency is hereby declared to exist and this act shall take effect immediately. [Approved Mar. 7, 1903; L. 1903, p. 54.]

§ 7399c. For Protection of Game Fish in Streams and Lakes—Prohibits Taking for Sale or for Curing.

Until after the first day of August, 1908, it shall be unlawful for any person to take from the streams or lakes of the state of Washington any trout or

other game fish for the purpose of selling, salting or otherwise preserving the same: Provided, This section shall not apply to salmon trout in streams west of the Cascade range.

Penalty.

Any person violating the provisions of the first section of this act shall be guilty of a misdemeanor and subject to a fine of not less than fifty dollars (\$50), or imprisonment of not less than thirty days, or both.

Prohibits Having in Possession or Transporting.

It shall be unlawful for any person, firm, company, partnership or corporation to transport or have in their possession for the purpose of transportation or for the market any trout or game fish within the state of Washington. Possession of any of said fish by any of said persons herein named shall be presumptive evidence that said fish are possessed for the purpose of sale in market: Provided, That nothing in this act shall be construed to be in conflict with the provisions of an act passed March 18, 1901, relating to the establishment and maintenance of private fish hatcheries, known as chapter 153, Laws of 1901.

Penalty.

Any steamboat or other transportation company violating section three of this act shall be guilty of a misdemeanor and shall be subject to a fine or imprisonment as provided in section two of this act.

An emergency is hereby declared to exist and this act shall take effect immediately. [Approved Mar. 14, 1903; L. 1903, p. 189.]

§ 7411. Prevention of Cruelty to Animals—Humane Society.

Any citizens of the state of Washington who have heretofore, or who shall hereafter, incorporate as a body corporate, under the laws of this state as a humane society or as a society for the prevention of cruelty to animals may avail themselves of the privileges of this act: Provided, That the corporate body existing at any given time and first incorporated as aforesaid in any county, shall be the only one entitled to the benefits and privileges of this act in such county.

Powers of Members.

All members and agents, and all officers of any society so incorporated, as shall by the trustees of such society be duly authorized in writing, approved by any judge of the superior court of the county, and sworn in the same manner as are constables and peace officers, shall have power lawfully to interfere to prevent the perpetration [perpetration] of any act of cruelty upon any animal and may use such force as may be necessary to prevent the same, and to that end may summon to their aid any bystander; they may make arrests for the violation of any of the provisions of this act in the same manner as herein provided for other officers; and may carry the same weapons that such officers are authorized to carry: Provided, That all such members and agents shall, when making such arrests, exhibit and expose a suitable badge to be adopted by such

society. All persons resisting such specially authorized, approved and sworn officers, agents or members shall be guilty of a misdemeanor.

Duties of Officers.

All sheriffs, constables, police and peace officers are empowered to make arrests for the violation of any provisions of this act, as in other cases of misdemeanor.

Inhuman Treatment by Users.

Every person who cruelly overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, cruelly beats, mutilates or cruelly kills, or causes, procures, authorizes, requests or encourages so to be overdriven, overloaded, driven when overloaded, overworked, tortured, tormented, deprived of necessary sustenance, cruelly beaten or mutilated or cruelly killed, any animal; and whoever having the charge or custody of any animal, either as owner or otherwise, inflicts unnecessary suffering or pain upon the same, or unnecessarily fails to provide the same with the proper food, drink, air, light, space, shelter or protection from the weather, or who willfully and unreasonably drives the same when unfit for labor or with yoke or harness that chafes or galls it, or check rein or any part of its harness too tight for its comfort, or at night when it has been six consecutive hours without a full meal, or who cruelly abandons any animal, shall be guilty of a misdemeanor.

Inhuman Treatment by Carriers.

If any person shall carry, transport, or confine, or cause to be carried, transported or confined upon any wagon, railway, car, vehicle, boat, vessel or otherwise, any domestic animal, in a cruel or unnecisarily [unnecessarily] painful manner, posture or confinement, he shall be guilty of a misdemeanor. And whenever any such person shall be taken into custody therefor by any officer or authorized person, such officer or person may take charge of such car, wagon, vehicle, boat or vessel and its contents together with the horse or team attached to any such wagon or vehicle, and place or leave the same in some reasonably safe place of custody; and any necessary expense which may be incurred for taking care of and keeping the same, shall be a lien thereon, to be paid before the same can be lawfully recovered; and if the said expenses, or any part thereof, remain unpaid, they may be recovered, by the person incurring the same, of the owner of such domestic animal, or of the person guilty, as aforesaid, in any action therefor.

Docking.

Every person who shall cut or cause to be cut, or assist in cutting the solid part of the tail of any horse in the operation known as "docking," or in any other operation for the purpose of shortening the tail or changing the carriage thereof, shall be guilty of a misdemeanor.

Amusement by Causing Animals to Fight.

Every person who wantonly or for the amusement of himself or others, or for gain, shall cause any bull, bear, cock, dog, or other animal to fight, chase, worry or injure any other animal, or to be fought, chased, worried or injured

by any man or animal, and every person who shall permit the same to be done on any premises under his charge or control; and every person who shall aid, abet, or be present at such fighting, chasing, worrying or injuring of such animal as a spectator, shall be guilty of a misdemeanor.

Amusement by Bird Fighting.

Every person who owns, possesses, keeps, or trains any bird or other animal with the intent that such bird or other animal shall be engaged in an exhibition of fighting, or is present at any place, building or tenement, where training is being had or preparations are being made for the fighting of birds or other animals, with the intent to be present at such exhibition, or is present at such exhibition, shall be guilty of a misdemeanor.

Penalty.

Every person who shall attempt to do any act or thing which by this act is made a misdemeanor shall be guilty of a misdemeanor.

Complaint on Oath.

When complaint is made on oath, to any magistrate authorized to issue warrants in criminal cases that the complainant believes that any of the provisions of law relating to or in any way affecting animals, are being or about to be violated in any particular building or place, such magistrates shall issue and deliver immediately a warrant directed to any sheriff, constable, police or peace officer, or officer of any incorporated society qualified as provided in the second section of this act, authorizing him to enter and search such building or place, and to arrest any person or persons there present violating or attempting to violate any law relating to or in any way affecting animals, and to bring such person or persons before some court or magistrate of competent jurisdiction within the city or county within which such offense has been committed or attempted to be committed, to be dealt with according to law.

Power to Arrest.

Any person qualified under section 2 of this act and any sheriff, constable, police or peace officer may enter any place, building or tenement, where there is an exhibition of the fighting of birds or animals or where preparations are being made or training had for such exhibition, and without a warrant arrest all or any persons there present and bring them before some court or magistrate of competent jurisdiction to be dealt with according to law.

Depriving of Food.

Any person who shall impound or confine or cause to be impounded or confined any domestic animal, shall supply the same during such confinement with a sufficient quantity of good and wholesome food and water, and in default thereof shall be guilty of a misdemeanor. In case any domestic animal shall be impounded or confined as aforesaid and shall continue to be without necessary food and water for more than twenty-four consecutive hours, it shall be lawful for any person, from time to time, as it shall be deemed necessary to enter into and open any pound or place of confinement in which any domestic

animal shall be confined, and supply it with necessary food and water so long as it shall be confined. Such person shall not be liable to action for such entry, and the reasonable cost of such food and water may be collected by him of the owner of such animal, and the said animal shall be subject to attachment therefor and shall not be exempt from levy and sale upon execution issued upon a judgment therefor.

Neglect of Aged Animals.

Every owner, driver, or possessor of any old, maimed or diseased horse, cow, mule, or other domestic animal, who shall permit the same to go loose in any lane, street, square, or lot or place of any city or township, without proper care and attention, for more than three hours after knowledge thereof, shall be guilty of a misdemeanor: Provided, That this shall not apply to any such owner keeping any old or diseased animal belonging to him on his own premises with proper care. Every sick, disabled, infirm or crippled horse, ox, mule, cow or other domestic animal, which shall be abandoned on the public highway, or in any open or inclosed space of any city or township, may, if, after search by a peace officer or officer of such society no owner can be found therefor, be killed by such officer; and it shall be the duty of all peace and public officers to cause the same to be killed on information of such abandonment.

Member of Society may Prosecute.

Any member of such society authorized as provided in section 2 of this act, may appear and prosecute in any court of competent jurisdiction for any violation of any of the provisions of this act, whether or not he be an attorney or counselor at law: Provided, That all such prosecution shall be conducted in the name of the people of the state of Washington.

Disposition of Fines.

Every person convicted of any misdemeanor under this act, shall be punished as is by law provided for the punishment of misdemeanors and all fines imposed or collected in any county under the provisions of this act, shall inure to the society in said county, organized and incorporated as in the first section of this act provided, in aid of the benevolent object for which it is incorporated, and shall be paid out of the county treasury to such society and the county auditor shall draw warrants in favor of such society upon the county treasurer therefor.

Punishment.

Every person convicted of any misdemeanor under this act, shall be punished by a fine of not exceeding one hundred and fifty dollars, or by imprisonment in the county jail not exceeding sixty days, or both such fine and imprisonment, and shall pay the costs of the prosecution.

Definitions.

In this act the singular shall include the plural; the word "animal" shall be held to include every living creature, except man; the words "torture," "torment," and "cruelty," shall be held to include every act, omission, or neglect

whereby unnecessary or unjustifiable physical pain or suffering is caused or permitted; and the words "owner" and "person" shall be held to include corporations as well as individuals; and the knowledge and acts of agents of and persons employed by corporations in regard to animals transported, owned, or employed by, or in the custody of such corporations, shall be held to be the act and knowledge of such corporations as well as of such agents or employees.

Construing Act.

No part of this act shall be deemed to interfere with any of the laws of this state known as the "Game Laws," nor shall this act be deemed to interfere with the right to destroy any venomous reptile or any known as dangerous to life, limb or property, or to interfere with the right to kill animals to be used for food or with any properly conducted scientific experiments or investigations, which experiments or investigations shall be performed only under the authority of the faculty of some regularly incorporated college or university of the state of Washington.

All acts and parts of acts inconsistent with the provisions of this act are hereby repealed. [Approved Mar. 18, 1901; L. 1901, p. 302.]

§ 7420. Intimidating or Bribing Voter.

If any person shall use any menaces, force, threats or any corrupt means at or previous to any election held pursuant to the laws of the state, towards any elector to hinder or deter such elector from voting at said election, or shall directly or indirectly offer any bribe or reward of any kind to induce any elector to vote contrary to his inclinations or shall on the day of election give any public treat or authorize any person to do so to obtain votes for any person, such person so offending shall be fined in any sum not less than one hundred nor more than one thousand dollars, or shall be imprisoned in the penitentiary not less than one year nor more than five years, or of both such fine and imprisonment. [Amendment, approved Mar. 18, 1901; L. 1901, p. 298.]

§ 7421. Influencing voter corruptly.—
In a prosecution for corruptly influencing a voter, the conviction of defendant is warranted, where the evidence shows that the defendant, who was a judge of election, gave a slip of paper to a voter at the latter's request, indicating that the voter was "all right," upon the surrender of which slip of paper to a third person outside the polls a sum of money was given to the voter, and that the defendant was with the voter in the voting booth at the time the latter marked his ballot, at the voter's request for instructions in regard thereto, but defendant did not ask the voter to vote any particular ticket, merely telling him that an "X" at the top of the national ticket voted the whole ticket, and showing how to mark the ballot in order to vote the ticket from governor down; there being no evidence of any relationship or conspiracy between the defendant

and the person giving the voter money, or that the voter knew the object of the slip of paper at the time he procured it, his actions in the matter being at the request of parties not in collusion with defendant, but who were attempting to discover corruption in the election: *State v. Milby*, 26 Wash. 661, 67 Pac. 362.

§ 7437. Sodomy—Attempt to commit.—
The provisions of Ballinger's Code, section 7437, for the punishment of attempts to commit crime, are not rendered inapplicable to a prosecution for sodomy by the mere fact that Ballinger's Code, section 7057, prescribes punishment for assaults with intent to commit sodomy and certain other crimes, since the latter section defines a substantive offense, with the punishment therefor, entirely distinct from that of an attempt to commit a crime: *State v. Romans*, 21 Wash. 284, 57 Pac. 819.

§ 7441. For the Protection of the American Flag.

That the national flag or the coat of arms of the United States or any imitation or representation thereof, shall not be attached to or imprinted or represented upon any goods, wares, or merchandise, or any advertisement of the same; and no goods, wares, or merchandise, or any advertisement of the same, shall be attached to the national flag or the coat of arms of the United States, and no such advertisement shall be imprinted thereon. Any violation of this act shall be punishable, on conviction in any court of competent jurisdiction in the state of Washington, by a fine of not more than five hundred dollars. [Approved Mar. 18, 1901; L. 1901, p. 321.]

§ 7442. Fixing the Penalty for Persons Convicted a Second and Third Time of Felony.*Duties of Prosecuting Attorney.*

It shall be the duty of the prosecuting attorney of any county, as soon as he has knowledge that a person indicted or informed against for felony, has been once or twice before convicted of any crime which under the laws of this state would amount to a felony, either within this state or elsewhere, to file and serve upon such person another information, setting fourth [forth] the fact of such former conviction or convictions, with the time and place when and where such former convictions occurred.

Trial of Issue of Former Conviction—Verdict.

If the defendant pleads guilty to the principal charge, or, if after trial, he shall be found guilty of such principal charge by a jury, unless the defendant admit the fact of such former conviction or convictions, the court shall immediately, if such further information was served before the trial upon the principal charge, or if served after the commencement of the trial then within five days and before sentence, impanel a jury to try the fact of such former conviction or convictions, and if such jury find, from the record thereof, or other competent evidence that such person has been once or twice before convicted of a crime, which under the laws of this state would amount to a felony, such jury shall make a return of such fact to the court. In case that such jury find that such person has been but once before convicted of a felony, the return shall show the time of his sentence under such former conviction.

Sentence.

In every case where a person is convicted of a felony and the jury impaneled for that purpose, in the manner provided in section 2 of this act, find that the person has been once before convicted of a crime, either in this state or elsewhere, which under the laws of this state would amount to felony, or if such person admit the fact of such former conviction in open court, he shall be sentenced to a term in the penitentiary of not less than double the time of the sentence upon the former conviction; and in case that such jury find or the said person admits in open court that he has been twice before convicted of crimes, either within or without this state, which under the laws of this state

would amount to felony, he shall be sentenced to the penitentiary for the term of his natural life.

Information Charging Former Conviction.

It shall be the duty of the prosecuting attorney of any county, as soon as he has knowledge that a person charged with the offense of petit larceny has been once or twice before convicted of the offense of petit larceny or of any crime which under the laws of this state would amount to a felony, either within this state or elsewhere, to file in the superior court an information charging said person with petit larceny and another information charging said person with having been before convicted of petit larceny or a crime amounting to a felony, and serve copies of such informations upon such person, and, if such person has been charged with said offense of petit larceny before any magistrate, upon said magistrate; and thereupon such magistrate shall certify all proceedings in the case to the superior court; and such proceedings shall be had as provided in section 2 of this act. In case upon the trial and proceedings had in the superior court the defendant shall be found guilty of petit larceny and the jury impaneled for that purpose shall fail to find the fact of such former conviction the court shall sentence the defendant as in other cases of petit larceny; in case the jury impaneled for that purpose shall find the fact of such former conviction the court shall sentence the defendant to the penitentiary for any term provided by law as the punishment for the crime of grand larceny. [Approved Mar. 14, 1903; L. 1903, p. 125.]

§ 7443. Providing a General Savings Clause in Repeals of Criminal Statutes.

No offense committed and no penalty or forfeiture incurred previous to the time when any statutory provision shall be repealed, whether such repeal be express or implied, shall be affected by such repeal, unless a contrary intention is expressly declared in the repealing act, and no prosecution for any offense, or for the recovery of any penalty or forfeiture, pending at the time any statutory provision shall be repealed, whether such repeal be express or implied, shall be affected by such repeal, but the same shall proceed in all respects, as if such provision had not been repealed, unless a contrary intention is expressly declared in the repealing act. Whenever any criminal or penal statute shall be amended or repealed, all offenses committed or penalties or forfeitures incurred while it was in force shall be punished or enforced as if it were in force, notwithstanding such amendment or repeal, unless a contrary intention is expressly declared in the amendatory or repealing act, and every such amendatory or repealing statute shall be so construed as to save all criminal and penal proceedings, and proceedings to recover forfeitures, pending at the time of its enactment, unless a contrary intention is expressly declared therein.

An emergency exists and these acts shall take effect immediately. [Approved June 13, 1901; L. 1901, p. 13, special session.]

STATE CONSTITUTION.

Proposal to Amend Section 2, Article 7, of the Constitution.

It is proposed to amend section (2) two of article seven (7) of the constitution of the state of Washington by adding thereto the following proviso:

“And provided further, That the legislature shall have power, by appropriate legislation, to exempt personal property to the amount of three hundred (\$300.00) dollars for each head of a family liable to assessment and taxation under the provisions of the laws of this state of which the individual is the actual and bona fide owner.”

The secretary of state shall cause the foregoing amendment to be published for three months next preceding said election to be held in November, 1900, in some weekly newspaper in every county within this state wherein a newspaper is published.

That at the general election to be held in November, 1900, the amendment hereinbefore mentioned in section 1, shall be submitted to the qualified electors of the state of Washington for their approval, and there shall be printed on all the ballots provided for said election the words: “For the proposed amendment to section 2 of article 7 of the constitution in relation to taxation.” “Against the proposed amendments to section 2 of article 7 of the constitution, in relation to taxation.” [Approved Mar. 13, 1899; L. 1899, p. 121.]

Art. 1, § 1. Political power.—The absence in the constitution of specially delegated power to the legislature of this state to enact laws for the taxation of inheritances is not to be construed as a restriction of the right, under the provisions of the Bill of Rights, which declare in article 1, section 1, that “all political power is inherent in the people, and governments derive their just powers from the consent of the governed,” and in article 1, section 30, that “the enumeration in this constitution of certain rights shall not be construed to deny others retained by the people,” since legacies and inheritances are but creatures of the law, and natural subjects for legislative control, in the absence of constitutional prohibition: *State v. Clark*, 30 Wash. 439, 71 Pac. 20.

Art. 1, § 3. Personal rights.—The statute (Gen. Stats., § 3124), giving servants, clerks, laborers, etc., the right to claim from the proceeds of execution or attachment sale of the property of their employ-

ers any amount, not exceeding one hundred dollars, due them for services rendered within sixty days next preceding the levy of the writ, and providing for the litigation of such claims, if disputed, is not open to the objection that it deprives one of his property without due process of law: *Gleason v. Tacoma Hotel Co.*, 16 Wash. 412, 47 Pac. 894.

Where a property owner has notice and an opportunity to defend before his title is actually divested by the issuance of a tax deed, the issuance of a tax certificate without notice to him, which the statute declares shall have the same force and effect as a judgment, execution and sale, will not constitute a taking of property without due process of law: *State v. Whitteley*, 17 Wash. 448, 50 Pac. 119.

A statute authorizing a justice of the peace to adjudge costs against a complaining witness in a prosecution for misdemeanor and order his imprisonment until paid, in case the trial results in the ac-

quittal of defendant and the court finds the complaint was frivolous and without probable cause, is not unconstitutional on the ground that it deprives a person of his liberty and property without due process of law: *Colby v. Backus*, 19 Wash. 347, 67 Am. St. Rep. 732, 53 Pac. 367.

The act of 1901 regulating and limiting the hours of employment of females in any mechanical or mercantile establishment (Laws 1901, p. 118), by forbidding their employment for more than ten hours during any day, is a legitimate exercise of the police power of the state, enacted for the welfare of society at large, and therefore constitutional, although a restriction to some extent upon the right of women to contract their labor (*Seattle v. Smith*, 22 Wash. 327, distinguished): *State v. Buchanan*, 29 Wash. 602, 70 Pac. 52.

The act of March 16, 1901 (Laws 1901, p. 222), to regulate the purchase, sale, transfer and encumbrance of stocks of goods, wares or merchandise in bulk, and declaring same void under certain circumstances, is a rightful exercise of legislative power, under the police powers of the state, for the protection of the public and the prevention of frauds among individuals, and hence not a violation of the constitutional prohibition against depriving persons of their property without due process of law, on the ground of restricting the rights of certain individuals to dispose of their property: *McDaniells v. Connelly*, 30 Wash. 549, 71 Pac. 37.

Due process of law.—The act of 1895 (Bal. Code, §§ 3755-3762), providing for the payment of expenses theretofore incurred in the construction of ditches is not subject to the objection that it deprives the land owner of property without due process of law, because no provision is made in the act in positive terms for contesting the assessments imposed by the county commissioners, since the act itself provides that in a suit to enforce the lien the property owner might set up any matter respecting the amount or legality of the assessment, and in addition an ample remedy for reviewing the proceedings of the board of commissioners is provided by writ of certiorari under the general laws of the state: *State v. Henry*, 28 Wash. 39, 68 Pac. 368.

Is a legitimate exercise of the police power, and does not violate the constitutional prohibition against depriving a person of his property, without due process of law, nor is it an invasion of his constitutional right to the enjoyment of life, liberty and property: *State v. Nichols*, 28 Wash. 628, 69 Pac. 771.

Art. 1, § 5. Freedom of speech.—The constitutional guaranty that "every person may freely speak, write and publish

on all subjects, being responsible for the abuse of that right," does not grant immunity from the jurisdiction and process of courts in proceedings for contempt against those publishing articles reflecting on the court or judges thereof pending the trial of a case: *State v. Tugwell*, 19 Wash. 238, 52 Pac. 1056.

Art. 1, § 9. Rights of accused persons. A defendant has been once in jeopardy and cannot be tried again for the same offense, when he has been arraigned upon an information sufficiently charging the crime of which he is accused, a lawful jury has been impaneled and sworn, and a court of competent jurisdiction has ordered the discharge of the accused at the close of the case made by the state: *State v. Hubbell*, 18 Wash. 482, 51 Pac. 1039.

Art. 1, § 11. Religious freedom.—The enactment of Sunday laws requiring the cessation of labor on the score of the physical and moral well-being of society, is an appropriate exercise of the police power of the state: *State v. Nichols*, 28 Wash. 628, 69 Pac. 771.

Art. 1, § 12. Special privileges and immunities.—An ordinance imposing a license tax upon all merchants using trading stamps for the purpose of stimulating the sale of goods is not void as imposing a burden upon a portion only of a class of merchants, as it applies to all who engage in business of that kind: *Fleetwood v. Read*, 21 Wash. 548, 58 Pac. 665.

A law giving laborers in certain enumerated industries liens for labor performed does not constitute special or class legislation in violation of section 12, article 1, of the constitution, where the law is uniform in its operation and all who are included therein are treated alike: *Fitch v. Applegate*, 24 Wash. 25, 64 Pac. 147.

Where a municipality has not by ordinance or contract attempted to give an exclusive right to the use of its streets to a telephone company to whom it had granted an easement therein, its refusal to grant the same rights to another telephone company, under its charter, empowering it to authorize or prohibit the use of electricity in or upon any of its streets, would not raise any question as to the violation of article 1, section 12, of the state constitution, which provides that "No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which, upon the same terms, shall not equally belong to all citizens or corporations": *State v. Spokane*, 24 Wash. 53, 63 Pac. 1116.

The right given to members of the bar by the jury act of 1901 (Laws 1901, p. 204), to recommend four eligible persons

from the bar of the county, from whom the court shall select two to act as commissioners for the selection of jurors, is not the conferring of a privilege or immunity upon any class of citizens such as is prohibited by section 12, article 1, of the state constitution: *State v. Vance*, 29 Wash. 437, 70 Pac. 34.

An act restricting retail merchants from transferring their stocks of merchandise in bulk, without making provision for the payment of creditors, is not class legislation within the meaning of the constitution, merely because it does not apply to all owners of property, so long as it applies alike to all persons in the class engaged in retailing merchandise: *McDaniells v. Connelly*, 30 Wash. 549, 71 Pac. 37.

The proviso to Ballinger's Code, section 7251, excepting from the operation of the statute hotels, drug-stores, livery-stables and undertakers does not violate the constitutional prohibition against the passage of laws granting to one class of citizens privileges or immunities which shall not equally belong to all citizens, since there is no restriction on any person engaging in the excepted lines of business and thus obtaining equal advantages with all others engaged therein: *State v. Nichols*, 28 Wash. 628, 69 Pac. 771.

Art. 1, § 14. Excessive bail.—A sentence of thirteen years for burglary will not be set aside as cruel and excessive punishment, where the maximum penalty is fourteen years, and the record indicates that it was not defendant's first offense: *State v. Burton*, 27 Wash. 528, 67 Pac. 1097.

Art. 1, § 16. Eminent domain.—The taxation by a city for municipal purposes of a body of agricultural land lying within its corporate limits, is not a taking of private property without just compensation, although the premises may be beyond the line and range of municipal benefits: *Frace v. City of Tacoma*, 16 Wash. 69, 47 Pac. 219.

The construction of ditches for drainage of land otherwise useless for agricultural purposes is recognized as a public use: *Lewis County v. Gordon*, 20 Wash. 80, 54 Pac. 779.

Laws 1893, page 226, providing for the reassessment of property "with reference to the benefits received," where the original assessment for street improvement has been declared invalid, complies with the doctrine that assessments for public improvements must be tested by the benefits conferred, and hence is not unconstitutional on the ground of authorizing the taking, under the guise of taxation, of private property for public use without

compensation: *McNamee v. Tacoma*, 24 Wash. 591, 64 Pac. 791.

One's right to light and air and access necessary to the use and possession of a lot abutting on a public street is property, within the meaning of article 1, section 16, of the constitution, and, under this constitutional provision, it would be error of the court to permit him to be deprived thereof upon the giving of a bond by the appropriator to pay all damages the property owner might sustain: *State v. Superior Court*, 26 Wash. 278, 66 Pac. 385.

A judicial determination as to the public utility of a county road which has been authorized by the board of county commissioners is not a prerequisite to the appropriation of land therefor under the power of eminent domain: *State v. Superior Court*, 29 Wash. 1, 69 Pac. 366.

The construction of a trestle or bridge in a street constitutes an appropriation of an adjoining lot owner's easements of light, air and access, for which he is entitled to just compensation to be ascertained by a jury: *State v. Superior Court*, 30 Wash. 220, 70 Pac. 485.

Art. 1, § 17. Imprisonment for debt.—Constitution, article 1, section 17, providing that there shall be no imprisonment for debt, except in case of absconding debtors, is not violated by Hill's Code, section 3050, providing that where a complaint charging one with an offense is frivolous and without probable cause, the costs shall be charged to complainant, who shall stand committed until they are paid: *Colby v. Backus*, 19 Wash. 347, 67 Am. St. Rep. 732, 53 Pac. 367.

A decree or order for alimony in a divorce proceeding is not a debt within the meaning of the constitutional inhibition forbidding imprisonment for debt: *In re Cave*, 26 Wash. 213, 90 Am. St. Rep. 736, 66 Pac. 425.

Art. 1, § 21. Trial by jury.—The constitutional provision declaring that "the right of trial by jury shall remain inviolate" has reference to the right to jury trial as it existed in the territory at the time when the constitution was adopted. As the right to trial by jury in quo warranto proceedings did not exist at common law at the date of the early settlement of this country, nor was authorized by statute at the date of the adoption of the state constitution, the constitutional provision, that "the right of trial by jury shall remain inviolate," is inapplicable in proceedings to try the right to a public office: *State v. Doherty*, 16 Wash. 382, 58 Am. St. Rep. 39, 47 Pac. 958.

Where plaintiff's action is founded upon a written contract, whose construction is

a matter of law for the court, the withdrawal of the case from the jury at the close of plaintiff's case and directing a verdict for defendant, there being no conflict in the testimony at that time, is in no sense a deprivation of the constitutional right of trial by jury: *Creagh v. Equitable Life Assur. Soc.*, 19 Wash. 108, 52 Pac. 526.

The constitutional provision (art. 1, § 21), that the right of trial by jury shall remain inviolate, is simply intended as a limitation upon the right of the legislature to take away the right of trial by jury, and is not intended to interfere with the right of the individual to waive such privilege: *State v. Ellis*, 22 Wash. 129, 60 Pac. 136.

Violation of city ordinances do not fall within the class of misdemeanors against the state, under which the accused is guaranteed the right of trial by jury: *State v. Kennan*, 25 Wash. 621, 66 Pac. 62.

Art. 1, § 22. Rights of accused persons—Compulsory attendance of witnesses.—Under article 1, section 22, of the constitution, guaranteeing to persons prosecuted for crime the right to have compulsory process to compel the attendance of witnesses in their behalf, it is error for the court to refuse to grant a continuance to procure the presence in person of a material witness for defendant, when proper application has been made therefor.

To appear and defend in person, abridged by being manacled during trial.—Under article 1, section 22, of the constitution, it is error to keep the accused in manacles during the progress of the trial and in the presence of the jury, unless it plainly appears that the prisoner is such a dangerous character as to warrant such precaution.

Same as to witnesses.—It is error, likewise, to require a witness for accused to appear in court fettered and manacled to another person, although he had been charged with the crime jointly with the accused and had been found guilty upon a prior and separate trial: *State v. Williams*, 18 Wash. 47, 63 Am. St. Rep. 869, 50 Pac. 580.

Meeting witnesses face to face.—In criminal trial, the deposition of a sick and absent witness is inadmissible in evidence: *State v. Hunter*, 18 Wash. 671, 52 Pac. 247.

One guilty as an accessory to the crime of rape by procuring its commission by another cannot be convicted under an information charging him as a principal with the commission of the crime by having carnal knowledge of the prosecutrix, as such an information would be in violation of his constitutional right

(art. 1, § 22), to be informed of the nature and cause of the accusation against him: *State v. Gifford*, 19 Wash. 464, 53 Pac. 709.

Art. 1, § 23. Impairing obligation of contracts.—A statutory provision that "this act shall not apply to judgments entered prior to the taking effect thereof, nor to executions which shall issue thereupon, but proceedings thereunder shall be had in all respects in the manner now provided by law, and redemptioners shall have the same right to redeem property sold upon judgments or decrees rendered prior to the taking effect of this act, as if this act had not been passed," clearly indicates the legislative intent to make the act retroactive and to subject judgments entered subsequent to the taking effect of the act to the operations of the new law without regard to the date of the contract. Where the law in force at the time of the execution of a mortgage provides for the immediate sale of the mortgaged premises upon decree of foreclosure, subject only to the right of redemption, and contains no provision requiring that the sale shall be for a sum within a certain percentage of the appraised value of the premises, a subsequent law providing for a year's stay of sale under the foreclosure decree and requiring the sale to bring within eighty per cent of the appraised value of the premises, is unconstitutional and void as to existing contracts for the reason that it is an impairment of their obligations. Inasmuch as the laws existing at the time of a contract enter into and form a part of it, the person entitled to enforce the obligation of a contract, is entitled to protection against a change in existing remedies, when their nature and extent are so changed as to materially affect his rights and interests under his contract: *Swinburne v. Mills*, 17 Wash. 611, 61 Am. St. Rep. 932, 50 Pac. 489. See *Rand, McNally & Co. v. Hartranft*, 29 Wash. 591, 70 Pac. 77.

Franchise a contract.—An ordinance granting a franchise is in the nature of a contract and it is not in the power of the city council to destroy rights and property thus granted by the passage of an ordinance repealing the franchise ordinance: *Commercial Electric Light etc. Co. v. Tacoma*, 17 Wash. 662, 50 Pac. 592.

Art. 1, § 25. Prosecution by information.—Held in *State v. McGilvery*, 20 Wash. 240, 55 Pac. 115, that preliminary examination by committing magistrate is not required under this section.

Art. 2, § 19. Legislation—One subject in bill.—The title of the act of March 19, 1895 (Laws 1895. p. 142), being "An act providing for the payment of expenses incurred in compliance with an

act entitled 'An act to provide for the construction, repairing and protection of drains and ditches for agricultural, sanitary and domestic purposes, and to provide for the organization of drainage districts,' is sufficiently comprehensive to cover the subject of assessments according to benefits upon lands drained in order to pay for right of way through same: *Lewis County v. Gordon*, 20 Wash. 80, 54 Pac. 779.

Laws 1895, page 173, defining the crimes of arson and attempted arson, and providing a punishment for each, does not violate article 2, section 19, of the constitution, which provides that, "No bill shall embrace more than one subject," since arson and attempted arson are sufficiently connected to permit legislation with reference thereto to be embodied in one act: *State v. Hall*, 24 Wash. 255, 64 Pac. 153.

The legislative act found in Laws 1901, page 213, entitled "An act to amend section 5645 of Ballinger's Annotated Codes and Statutes of Washington, and declaring an emergency," is void by reason of violating the constitutional requirement (art. 2, § 19), that the subject of an act shall be expressed in its title: *State v. Superior Court*, 28 Wash. 317, 92 Am. St. Rep. 831, 68 Pac. 957.

Where an act of the legislature is entitled, "An act to provide for the assessment and collection of taxes in the state of Washington," the title is sufficiently comprehensive to embrace provisions in the act providing for the issuance of delinquency tax certificates to any applicant, with a guaranty by the county or municipality that the sum paid for the certificate will be refunded with six per cent interest in case the tax be void. The provision in a statute regulating the collection of taxes, that, whenever taxes are delinquent the treasurer shall issue to any applicant who shall pay the taxes upon delinquent property a certificate which can be redeemed only by paying the holder the amount paid by him thereon with fifteen per cent interest, thus virtually exacting compound interest, does not violate the constitutional requirement that taxes shall be uniform, although other delinquent property owners against whom no tax certificate has been issued may be able to clear their property by the payment of the tax with simple interest: *State v. Whittlesey*, 17 Wash. 447, 50 Pac. 119.

The title of an act declaring that it is "an act relating to the sale of property under execution and decree, and the confirmation of sheriff's sales," etc., is comprehensive enough to embrace provisions in the act relating to decrees of foreclosure of mortgages. That it was the

intent of the legislature to include the subject of mortgage foreclosures in the body of an act relative to sales of property under execution and decree sufficiently appears from a provision therein that "in case of foreclosure of mortgages or other liens nothing shall prevent the sale of the entire premises included within the mortgage or lien: *Swinburne v. Mills*, 17 Wash. 611, 61 Am. St. Rep. 932, 50 Pac. 489.

An act which repeals an act authorizing municipal courts, but makes provision for their continuance until a certain date, is not objectionable as embracing more than one subject, since the subject of the act is the abolishment of the office with a designation of the time when the act shall become effective; and the title, which declares that it is an act repealing the act establishing municipal courts and abolishing the courts and offices thereby created, is broad enough to cover the subject matter: *Bogue v. Seattle*, 19 Wash. 396, 53 Pac. 548.

The subject of an act providing for the recording of conditional sales and leases of personal property in order to prevent their being treated as absolute as to creditors and purchasers in good faith, is sufficiently expressed in the title of the act, entitled "An act in relation to conditional sales and leases of personal property": *Johnston v. Wood*, 19 Wash. 441, 53 Pac. 707.

Under section 19, article 2, which provides that no bill for an act of the legislature shall embrace more than one subject, which must be expressed in the title, a section in the school law defining a misdemeanor and providing for its punishment is illegally embraced within an act entitled "An act to establish a general and uniform system of public schools in the state of Washington": *State v. MacDonald*, 25 Wash. 123, 64 Pac. 912.

Art. 2, § 24. Lotteries and divorce.—The constitutional provision that "the legislature shall never authorize any lottery" is mandatory and self-executing and prohibitory of lotteries for any purpose, charitable or otherwise: *Seattle v. Chin Let*, 19 Wash. 38, 52 Pac. 324.

Art. 2, § 25. Extra compensation prohibited.—Under section 25, article 2, of the constitution, which provides that "the legislature shall never grant any extra compensation to any public officer, agent, servant or contractor after the services shall have been rendered or the contract entered into," an allowance of extra compensation to employees of the legislature subsequent to the rendition of the services they were employed to perform is void. The constitutional limitation against the granting of extra compensation by the legislature to officers,

employees or servants of the state, is applicable to either branch, as well as to the whole body, of the legislature. The constitutional restriction against the legislature's granting extra compensation to officers or servants after the rendition of the services or the entering into the contract, and against increase of compensation of a public officer during his term of office does not prohibit the legislature, or either branch, from granting an employee compensation for services performed in addition to the regular duties for which he was employed: *State ex rel. Eshelman v. Cheetham*, 21 Wash. 437, 58 Pac. 771.

Article 2, section 25, and article 11, section 8, of the constitution, which prohibit the increase of an officer's salary during his term of office, do not inhibit the allowance of witness fees to a policeman, although he draws a regular monthly salary as such officer, since such services as a witness do not fall within the duties required of him by his office: *State v. Sailard*, 22 Wash. 267, 60 Pac. 651.

Art. 2, § 33. Alien ownership of land.—The constitutional provision (art. 2, § 33), prohibiting corporations, the majority of whose stock is held by aliens, from acquiring the ownership of lands in this state, places no restriction upon the granting of fishing licenses to such corporations, since the license authorized under our statutes is merely a roving license for a limited period without conferring any title to real property: *Hastings v. Anacortes P. Co.*, 29 Wash. 224, 69 Pac. 776.

A corporation organized and existing under and by virtue of the laws of this state, which authorize "any two or more persons" to organize a corporation but nowhere requires that the incorporators, nor the holders of a majority of the capital stock, shall be citizens of the state or of the United States, is not an alien merely because a majority of its capital stock is owned by aliens, but is a domestic corporation: *Id.*

The constitutional provision declaring void "all conveyances of lands hereafter made to any alien, directly or in trust for such alien," does not apply to cases in which a citizen deeds to an alien mortgaged lands in satisfaction of a bona fide mortgage debt, since another section of the same constitutional provision excepts from the prohibition upon alien ownership lands acquired "under mortgage or in good faith in the ordinary course of justice in the collection of debts." Where an alien has power to hold real estate at all, a deed to him in violation of the law will pass a title good against all the world except the state, and one which can only be attacked by a direct proceeding upon the part of the state.

An alien holding lands in this state under a defeasible title, which is subject to attack on the part of the state as in contravention of the constitution, may by deed transfer a good title thereto to any person entitled to hold it, if no proceeding has been taken by the state for the purpose of setting aside the deed to the alien: *Oregon Mortgage Co. v. Carstens*, 16 Wash. 165, 47 Pac. 421.

The incapacity of a mortgagee, by reason of alienage, to take title to real estate, can only be shown in a suit by the state: *Goongan v. Richardson*, 16 Wash. 373, 47 Pac. 762.

Under article 2, section 33, of the state constitution, prohibiting the ownership of lands by aliens and declaring void the conveyance to them of lands, except such as contain valuable deposits of minerals, metals, iron, coal or fire clay, and the necessary land for mills and machinery to be used in the development thereof, a lease of lands not falling within such exception for a period of ninety-nine years is for such an unreasonable term, as to fall within the meaning and spirit of the constitutional prohibition against alien ownership: *State ex rel. Winston v. Morrison*, 18 Wash. 664, 52 Pac. 228.

Under the constitutional provision prohibiting alien ownership of lands in this state and declaring that every corporation, a majority of whose stock is owned by aliens, shall be deemed an alien for the purposes of such prohibition, conveyances to a corporation, a majority of whose stockholders are aliens, may be avoided at the suit of the state, although at the time the conveyance was made a majority of the stockholders may have been citizens of the United States; a lease of lands to an alien for the period of forty-nine years is void: *State ex rel. Winston v. Hudson Land Co.*, 19 Wash. 85, 52 Pac. 574.

Art. 2, § 37. Legislation—Amendments. Under article 2, section 37, of the state constitution, which provides that "no act shall ever be revised or amended by mere reference to its title, but the act revised or the section amended shall be set forth at full length," section 1 of the act of March 11, 1897 (Laws 1897, p. 93), is unconstitutional on the ground that it amends an existing statute by ingrafting into it an additional provision which alters its scope and effect, and fails to set forth the statute in full as amended: *Copeland v. Pirie*, 26 Wash. 482, 90 Am. St. Rep. 769, 67 Pac. 227.

Art. 3, § 2. Governor—Term of office.—It is held in *State v. McBride*, 29 Wash. 335, 70 Pac. 25, that the lieutenant governor becomes governor by succession of law, for the unexpired term for which the deceased governor was elected. It is

also held in the same case that he is by such succession relieved of the duty of presiding over the senate.

Art. 3, § 9. Pardoning power.—See section 204-208, Statutes; *State ex rel. Rogers v. Jenkins*, 20 Wash. 78, 54 Pac. 765.

Art. 3, § 12. Veto of item of appropriation—Effect of subsequent general appropriation bill.—The subsequent passage at the same legislative session of a general act establishing a general uniform system of public schools, which covers the method of conducting normal schools and the auditing and allowance of claims for expenses incurred, would not work a nullification of the veto of a special item in the general appropriation bill providing for the maintenance of one of the state normal schools: *State ex rel. v. Cheetham*, 17 Wash. 483, 49 Pac. 227, 1072.

Art. 4, § 1. Judiciary.—See note to section 1143, Statutes; *Bellingham Bay Imp. Co. v. Whatcom*, 20 Wash. 53, 54 Pac. 774.

A statute authorizing city councils to sit as boards of equalization and pass upon the validity of reassessments for local improvements is not unconstitutional on the ground of conferring judicial powers on such bodies: *Heath v. McCrea*, 20 Wash. 342, 55 Pac. 432.

Art. 4, § 2. Supreme court.—The number of judges of the supreme court may be temporarily increased, and decreased again to a minimum of five, whenever in the judgment of the legislature necessity or occasion requires: *State v. McBride*, 29 Wash. 335, 70 Pac. 25.

Art. 4, § 3. Term of office.—The six year term fixed by the constitution is applicable only to elected judges, and a statute fixing the term of appointive judges for a period short of the succeeding general state election would not be in conflict therewith: *State v. McBride*, 29 Wash. 336, 70 Pac. 25.

Art. 4, § 4. Jurisdiction of supreme court.—The provision of article 4, section 4, of the constitution, limiting the appellate jurisdiction of the supreme court in civil actions to cases where the original amount in controversy does not exceed the sum of \$200, applies to the amount sued for, and not to the judgment rendered: *Trumbull v. School District*, 22 Wash. 631, 61 Pac. 714.

Article 4, section 4, of the state constitution, conferring original jurisdiction upon the supreme court to issue the writ of prohibition, must be construed in the light of the law defining the writ of prohibition which was in force at the time of the adoption of the constitution; and the law then in force having restricted the writ to its common-law function for the restraint of unauthorized judicial or quasi judicial power, the original juris-

diction of the supreme court is not extended to include ministerial and administrative acts by Ballinger's Code, section 5769, which provides that the writ of prohibition shall arrest the proceedings of any tribunal, corporation, board or person, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board, or person. Original jurisdiction to restrain such acts is in the superior court: *Winsor v. Bridges*, 24 Wash. 540, 64 Pac. 780.

In an action on an injunction bond to recover damages in the sum of \$260, the action of plaintiffs before resting their case, in waiving all claims for attorney fees, which one paragraph of their complaint had claimed as an item of damages in the sum of \$100, thereby reduced the amount in controversy to \$160, and hence judgment therein would not be appealable, under the constitutional provision restricting the appellate jurisdiction of the supreme court in actions for the recovery of money to cases where the amount in controversy exceeds the sum of \$200: *Dodge v. Corliss*, 28 Wash. 474, 68 Pac. 869.

The constitutional provision limiting the jurisdiction of the supreme court on appeal to cases where the amount in controversy exceeds \$200 applies to the amount sued for and not to the judgment rendered: *Kirby v. Hotel Co.*, 28 Wash. 705, 69 Pac. 378.

Upon the dismissal of an appeal for want of jurisdiction, judgment for costs will be rendered against the appellant, but not against the sureties upon the appeal bond: *Henry v. Great Northern Ry. Co.*, 16 Wash. 417, 47 Pac. 895.

An amendment of complaint which reduces the amount in controversy below the \$200 limit deprives the supreme court of jurisdiction by appeal: *Huber v. Brown*, 17 Wash. 4, 48 Pac. 412.

Prohibition.—The supreme court has jurisdiction to issue an order of supersedeas to preserve the status quo of parties pending the determination of an appeal on its merits, under article 4, section 4, of the constitution, when for want of such an order the appeal may be rendered of no avail to appellant: *State v. Board of Education of Seattle*, 19 Wash. 8, 67 Am. St. Rep. 706, and note, 52 Pac. 317.

Amount in controversy.—Under article 4, section 4, of the constitution, prohibiting appellate jurisdiction in actions for the recovery of money, where the amount in controversy is less than \$200, the consolidation of a number of actions by different plaintiffs against the same defendant, the amounts involved in each case being less than \$200, will not invest the supreme court with jurisdiction of an appeal from the judgments rendered, although their aggregate sum is largely in

excess of \$200, where each plaintiff had a distinct and separate cause of action, and could not recover unless he showed that he was individually entitled to a judgment: *Garneau v. Port Blakely Mill Co.*, 20 Wash. 97, 54 Pac. 771.

Mandamus—Amount in controversy.—The constitutional provision giving the supreme court original jurisdiction in mandamus as to state officers must be construed in connection with the provision of the same section prohibiting the jurisdiction of the supreme court in cases of appeal where the amount in controversy is less than \$200, and hence the supreme court has no jurisdiction by mandamus to compel the superior court to try an action where the amount involved is less than \$200: *State v. Superior Court of Spokane Co.*, 21 Wash. 108, 57 Pac. 352.

The constitutional provision (art. 4, § 4), conferring on the supreme court "appellate jurisdiction in all cases and proceedings," with certain exceptions, is not self-executing, but confers a power which is dormant until methods of appeal shall be prescribed by the legislature or by the rules of the court itself: *Western Am. Co. v. St. Ann Co.*, 22 Wash. 158, 60 Pac. 158.

Mandamus will not lie to compel the superior court to try an action where the amount involved is less than \$200, since the constitutional provision giving the supreme court jurisdiction in mandamus as to state officers must be construed in connection with the provision in the same section prohibiting the appellate jurisdiction of the supreme court, where the amount in controversy is less than \$200: *State ex rel. Wallace v. Superior Court*, 24 Wash. 605, 64 Pac. 778.

Art. 4, § 5. Vacancy in office of.—A judge of the superior court, who has been elected to fill an unexpired term, is entitled to qualify and take office as soon as the result of the election has been declared, under article 4, section 5, of the constitution: *State ex rel. Linn v. Millett*, 20 Wash. 221, 54 Pac. 1124.

Art. 4, § 6. Jurisdiction of superior court.—Article 4, section 6, of the constitution, which provides that superior courts "shall always be open except on nonjudicial days" and that "injunctions and writs of prohibition and habeas corpus may be issued and served on legal holidays and nonjudicial days," cannot be construed as prohibiting the reception of a verdict on nonjudicial days, since such act is a ministerial, and not a judicial one: *State v. Straub*, 16 Wash. 111, 47 Pac. 227.

Writ of certiorari issued by the clerk of the court is illegal. Section 6, article 4, of the constitution of this state,

relating to the jurisdiction of the superior court provides: "Said courts and their judges shall have power to issue writs of . . . certiorari," etc., which evidently contemplates that the application for the writ shall be made to the court or the judge thereof, and the act of 1895, supra, is in harmony therewith: *Leavitt v. Chambers*, 16 Wash. 353, 354, 47 Pac. 755.

Under the constitution and statutes the superior court has concurrent jurisdiction with the municipal court over misdemeanors committed within cities which have been granted municipal courts by the legislature: *State v. Considine*, 16 Wash. 358, 47 Pac. 755.

Art. 4, § 16. Comment on evidence.—In an action involving the title to a certain engine claimed by defendants under a written contract and by plaintiffs by virtue of a subsequent abrogation thereof by parol agreement, an instruction which charges the jury that "where it has once been established that there has been a contract of agreement between two or more individuals, and the same is sought to be avoided by any parol agreement, that the written agreement is the best evidence," should not be held as prejudicial error on the ground of being a comment on the evidence: *Carstens v. Earles*, 26 Wash. 678, 67 Pac. 404.

Error of the court in commenting on the testimony during the trial, when unobjected to, cannot be urged as error after the verdict: *Shoemaker v. Bryant Lumber Co.*, 27 Wash. 638, 68 Pac. 380.

In an instruction to the effect that defendant's good character, if proven, was a circumstance to be considered by the jury with all the other facts in the case, a statement by the court that "it is not a convincing matter" was not prejudicial, as a comment on the facts, where it is evident from the charge as a whole that the court did not make such statement with reference to the facts of the case on trial, but meant to state generally that the good character of an accused was not of itself sufficient to preclude a verdict of guilty, if the jury believed from the evidence as a whole that he was guilty of the crime charged: *State v. Newton*, 29 Wash. 374, 70 Pac. 31.

The use by the court of the language "that in making the assault he intended to use whatever force might be necessary to overcome the prosecuting witness and accomplish his purpose—that of robbery," does not amount to a comment on the testimony, where it was immediately preceded in the same instruction by the charge, "if you believe from the evidence beyond a reasonable doubt that at the time in question he committed an assault upon the prosecuting witness for the

purpose of robbery: *State v. Fenton*, 30 Wash. 326, 70 Pac. 741.

When references to the evidence, made by the court in its charge to the jury, do not amount to an explanation or criticism of the evidence, nor assume that a particular fact is proven thereby, such references do not violate the constitutional prohibition against judges commenting upon matters of fact: *Drumheller v. American Surety Co.*, 30 Wash. 531, 71 Pac. 25.

Where there is no evidence as to a particular matter, it is not a comment on the facts for the court to tell the jury that "the testimony is silent as to that point": *Id.*

In an action to recover upon a certificate of deposit from a guarantor who is alleged to have guaranteed payment in consideration of an extension being granted to the bank of issuance, where there was evidence that defendant was a managing director of the bank, and that the bank officers were attempting to obtain money for the purpose of tiding over a financial crisis, it was not error for the court to charge the jury that if they found defendant "was the managing director of the bank at the time of the extension, you have a right to consider that, along with all the other circumstances in arriving at a conclusion as to whether or not he approved or consented to the extension." Such instruction does not violate the constitutional inhibition in relation to comments upon the testimony: *Rattlemiller v. Stowe*, 28 Wash. 104, 68 Pac. 168.

Under article 4, section 16, of the constitution, which provides that "judges shall not charge juries with respect to matters of fact, nor comment thereon," it is reversible error for the court, though requested by the jury because of a disagreement as to their recollection of the testimony, to state to the jury that his notes showed that a witness testified to a certain fact, and that he did not recall whether he testified to a certain other fact concerning which the jury requested information: *State v. Hyde*, 20 Wash. 234, 55 Pac. 49.

Where the court, in criminal case, asks leading questions of a witness in such a way as to convey to the minds of the jury the court's opinion of what the evidence tended to show, it amounts to a comment on the facts, within the prohibition of article 4, section 16, of the constitution: *State v. Crotts*, 22 Wash. 245, 60 Pac. 403.

Remarks of the court as to facts in the case, addressed not to the jury, but to counsel, in passing upon propositions of the latter for the introduction of testimony, or in reply to suggestions concern-

ing testimony, are not in violation of article 4, section 16, of the constitution, which prohibits judicial comment on the facts, especially when the court cautions the jury to pay no attention to what passes between him and counsel: *State v. Surry*, 23 Wash. 655, 63 Pac. 557.

A remark by the judge that every doctor examined seemed to locate the external capsular ligament in a different place, and he would like to see in a surgical work, just where that ligament is, and would like an exact description of it, does not fall within the prohibition of article 4, section 16, of the constitution against commenting on the facts, since the remark amounts to nothing more than an expression of the judge's inability to understand, from the description given by the medical witnesses, the exact location of that ligament, made with the object of calling the attention of counsel to the difficulty felt by him, so as to have the matter made clearer to judge and jury: *Miller v. Dumon*, 24 Wash. 648, 64 Pac. 804.

The action of the court in expressing an opinion on the facts when ruling upon a motion for nonsuit, is not error, although made in the presence of the jury, when counsel have not requested the withdrawal of the jury during argument and ruling upon the motion: *Myrberg v. Baltimore etc. Refining Co.*, 25 Wash. 364, 65 Pac. 539.

Art. 4, § 20. Judiciary—Time for rendering judgments.—The entry of a judgment some six months after its rendition does not render it void under the constitutional provision requiring a decision by the superior court within ninety days after the final submission of any cause to it, when the decision of the court was in fact given orally at the close of the trial: *Title & Trust Co. v. Olympia*, 19 Wash. 150, 52 Pac. 1015.

Art. 4, § 23. Court commissioners.—A court commissioner has power to try causes in which a jury is not required, and to enter judgment, which stands as the final judgment of the court, when no proceedings are instituted for its review by the court below, since the term "at chambers" must be construed in the light of the practice prevailing at the date of the adoption of the constitution, and under the law then in force (Code 1881, § 2138), judges could at chambers try, hear, and determine all actions, causes, motions, demurrers, and other matters not requiring a trial by jury: *Peterson v. Dillon*, 27 Wash. 78, 67 Pac. 397.

Art. 7, § 1. Annual state tax—Exemptions of private property.—Only public property, and that of a quasi public character, can be exempt from taxa-

tion under the provisions of section 1, article 7, of the state constitution, declaring that "all property in the state not exempt under the laws of the United States or under this constitution, shall be taxed in proportion to its value"; and under section 2, article 7, declaring that "the legislature shall provide by law a uniform and equal rate of assessment and taxation on all property in the state, according to its value in money, and shall prescribe such regulations by general law as shall secure a just valuation for taxation of all property, so that every person shall pay a tax in proportion to the value of his, her or its property; . . . provided, further, that the property of the United States, and of the state, counties, school districts and other municipal corporations, and such other property as the legislature may by general laws provide, shall be exempt from taxation: *State v. Daniel*, 17 Wash. 111, 49 Pac. 243.

Franchises, being a species of personal property, are taxable under article 7, section 1, of the state constitution, which provides that "all property in the state not exempt under the laws of the United States or under this constitution, shall be taxed in proportion to its value," and under Laws 1897, page 136, providing that "all real and personal property now existing, or that shall be hereafter created or brought into this state, shall be subject to assessment and taxation": *Commercial Electric etc. Co. v. Judson*, 21 Wash. 49, 56 Pac. 829.

Art. 7, § 2. Equality of taxation.—Laws 1901, page 67, providing for the taxation of inheritances is not invalid by reason of exempting some and laying proportional taxes on different ones, since the charges provided for are upon the passing of the estate by succession and are not a tax upon property, and hence do not conflict with article 7, sections 1, 2, 5, of the state constitution, which require all property to be taxed uniformly according to its value in money: *State v. Clark*, 30 Wash. 439, 71 Pac. 20.

The exemption in the inheritance tax law (Laws 1901, p. 68, § 2), from the provisions of the act of sums below \$10,000 when the estate passes to direct heirs and kindred is not invalid as violating the constitutional requirement of equality in taxation, for the reason that it does not extend the same exemption to devisees to collateral heirs or strangers to the blood, since there is no inequality provided among members of the same class, and such rule of equality does not forbid a liberal classification for purposes of taxation: *State ex rel. Chamberlin v. Daniel*, 17 Wash. 111, 49 Pac. 243.

Bank stock held to be credits within the meaning of the provisions hereof:

Pullman S. B. v. Manring, 18 Wash. 250, 51 Pac. 464.

The provision of section 2, article 7, of the state constitution authorizing the deduction of debts from credits for purposes of taxation is not repugnant to the fourteenth amendment to the constitution of the United States, which provides that "no state shall deny to any person within its jurisdiction the equal protection of the laws": *Newport v. Mudgett*, 18 Wash. 271, 51 Pac. 466.

The constitutional provision (art. 7, § 2), requiring a uniform and equal rate of assessment and taxation on all property in the state according to its value in money, does not prescribe uniform methods of assessment for all classes of property, but is a requirement that the rate of assessment and the method of valuation shall be uniform as to property sought to be taxed: *Pacific National Bank v. Pierce County*, 20 Wash. 675, 56 Pac. 936.

A tax on trades, professions and occupations is not a tax on property, which falls within the inhibition imposed by the constitutional provisions in relation to uniformity of taxation: *Fleetwood v. Read*, 21 Wash. 548, 58 Pac. 665.

The constitutional provision requiring uniformity and equality in taxation applies to taxes upon property, but has no application to taxes upon trades, professions or occupations: *Stull v. De Mattos*, 23 Wash. 71, 62 Pac. 451.

Art. 7, § 5. Taxation.—In *State v. Henry*, 28 Wash. 38, 68 Pac. 368, it is held that the provisions of this section are infringed by section 8 of Laws 1895, being section 3762 of Ballinger's Codes and Statutes.

Art. 8, § 1. Limitation of state debt. See note to section 4, Laws 1899; *State v. Rogers*, 21 Wash. 206, 57 Pac. 801.

Art. 8, § 6. Municipal indebtedness.—The constitutional limitation of county indebtedness, in section 6, article 8, of the state constitution, does not include the necessary expenditures made mandatory in the constitution and provided for by the legislature, and which are thereby imposed upon the county. Liabilities incurred by a county in conforming to the constitution and laws of the state, and those current expenses which are necessary to the maintenance and life of the county government itself, are primary obligations, which of necessity always continue, and which are entitled to priority over liabilities incurred by the county for other purposes: *Rauch v. Chapman, County Treasurer, etc.*, 16 Wash. 568, 58 Am. St. Rep. 52, 48 Pac. 253.

Where a county has reached the constitutional limit of its indebtedness, it may thereafter issue its obligations for

those expenses necessary to maintain its existence; but for the purpose of computing the amount of indebtedness it is not authorized to deduct its obligations for such necessary expenses from the sum total of indebtedness, in order to allow a greater margin for such permissible obligations as it is permitted to incur prior to reaching the constitutional limit (*Rauch v. Chapman*, 16 Wash. 568, explained): *Duryea v. Friars*, 18 Wash. 55, 50 Pac. 583.

The issuance of bonds for the construction of a waterworks system payable from a fund to be created from a certain percentage of the gross revenues of the system, would not create a debt against the city, although it might ultimately prove that the proportion of revenues from the system allowed for current expenses in its operation would be inadequate to fully meet such expenses. The fact that a special fund, which is to be provided for the construction of a system of waterworks, is not in existence, would not make expenditures incurred on the credit of that fund, and which are provided as payable therefrom, an indebtedness against the city: *Faulkner v. Seattle*, 19 Wash. 320, 53 Pac. 365.

In computing the indebtedness of a city to ascertain whether it comes within the one and one-half per cent limitation of taxable property, permitted by article 8, section 6, of the constitution, there should be deducted from the outstanding indebtedness the amount of cash on hand and the amount of uncollected current and delinquent taxes. Where a city has incurred a bonded indebtedness by a vote of its people, under the constitutional provision allowing cities by popular vote to incur such indebtedness in excess of one and one-half per cent of its taxable property up to five per cent thereof, such bonded indebtedness is not to be included in making computations of a city's indebtedness in order to ascertain whether it is in excess of the one and one-half per cent limitation: *Graham v. Spokane*, 19 Wash. 447, 53 Pac. 714.

Under article 8, section 6, of the constitution, it is not necessary that a proposition for increasing the county's indebtedness submitted at a general election should obtain three-fifths of the highest vote cast at such general election, but no more is required than that such special proposition, in order to carry, receive three-fifths of the votes cast by the voters who specially vote thereon: *Strain v. Young*, 25 Wash. 578, 66 Pac. 64.

The provision of the state constitution (art. 8, § 6), which authorizes cities to become indebted in excess of the limitation upon general municipal indebtedness, for the purpose of supplying such cities

with water, artificial light and sewers, cannot be construed as a prohibition upon the method of payment for water mains other than out of a general fund for that purpose nor as a limitation on the legislative power to vest corporate authorities with power to make local improvements by special assessment: *Smith v. Seattle*, 25 Wash. 300, 65 Pac. 612.

The limitation in article 8, section 6, of the constitution against cities incurring an indebtedness for water, artificial light, and sewers in excess of the five per cent additional to the amount allowed for general municipal indebtedness has no application to indebtedness by local assessment districts in the laying of water mains, in which the cost is chargeable against the property benefited: *Id.*

Under article 8, section 6, of the constitution, the indebtedness which a city is thus authorized to incur falls into two classes—the first comprising that which may be incurred without a vote up to one and one-half per centum of its taxable property, and the second that which may be incurred by vote in excess of one and one-half per centum and up to five per centum of its taxable property; consequently where a city has authorized a debt of the second class, no portion of such debt can be taken into account in computing the amount of indebtedness under the first class, unless it clearly appears that it was the intent of the city, at the time of authorizing indebtedness in excess of the one and one-half per centum limitation, to have some portion of such authorized indebtedness charged against the first class of indebtedness: *Hazeltine v. Blake*, 26 Wash. 231, 66 Pac. 394.

The city of Olympia, having passed its limit of indebtedness under the first class, by popular vote authorized the issuance of bonds in the sum of \$200,000, which sum was almost \$5,000 in excess of what could be issued under the five per cent limitation. Held, that where there is nothing in the record overcoming the prima facie presumption of the invalidity of such overissue of bonds, no presumption will arise that it was the intent of the voters to have such overissue charged against the class of indebtedness falling within the one and one-half per cent limitation, when to give effect to such presumption would render subsequent obligations of the city illegal: *State v. Blake*, 26 Wash. 238, 66 Pac. 396.

Warrants issued by a city for necessary expenses in maintaining the existence of the municipality are valid, although the city may at the time have been indebted in excess of the constitutional limitation of one and one-half per centum of its taxable property, and such warrants are en-

titled to payment out of available funds in the order of their issuance: *Hull v. Ames*, 26 Wash. 272, 90 Am. St. Rep. 743, 66 Pac. 391.

Warrants issued by a city in excess of its constitutional limit of indebtedness are valid on the score of necessity for the perpetuation of its corporate existence, when such warrants were issued to cover the expenses of constructing a jail, boarding prisoners, feeding impounded stock, guarding quarantine patients, publishing notice of election, printing ballots, insurance on city buildings, services in making assessment-rolls, city printing, postage and stationery for city officers, and necessary expenses of the city clerk: *Gladwin v. Ames*, 30 Wash. 608, 71 Pac. 189.

Warrants issued in payment of salaries of county officers, although in excess of the limit of one and one-half per cent of the assessed valuation of property, are valid, on the ground of being compulsory obligations imposed upon the county by the constitution and laws of the state: *Farquharson v. Yeargin*, 24 Wash. 549, 64 Pac. 717.

Art. 8, § 7. Municipal corporation—Loaning funds or credit prohibited.—The depositing by a city treasurer of public funds intrusted to his keeping in a bank for safekeeping, subject to repayment on demand, is neither a loan nor an investment of the funds, and hence not illegal within the contemplation of the statute making it criminal and illegal for a city treasurer to make a profit by loaning or otherwise using such funds contrary to law: *Bardsley v. Sternberg*, 18 Wash. 613, 52 Pac. 251, 524.

Article 8, section 7, of the state constitution prohibiting municipal corporations from loaning their money or credit to or in aid of any individual or corporation, is violated by a contract which provides that the city's warrants in payment of certain contract work shall bear interest from date of issuance, but that, on completion of the work, the contractors shall refund to the city all sums it has paid, or incurred liability to pay, as interest between the date of issuance of the warrants and the final completion of the work: *Moran v. Thompson*, 20 Wash. 525, 56 Pac. 29.

Art. 11, § 3. New counties.—Where a new county has been set off from another county, under article 11, section 3, of the constitution prohibiting the formation of new counties containing a less population than two thousand, the failure of the legislative records to recite the fact that such new county contains a population of not less than two thousand would not render the creation of such county illegal, since the

legal presumption is that this fact must have been proved to the satisfaction of the legislature and that the passage of the act itself is equivalent to a finding of the necessary facts: *Farquharson v. Yeargin*, 24 Wash. 549, 64 Pac. 717.

Art. 11, § 5. Election and compensation of county officers.—Although article 11, section 5, of the constitution provides for a general and uniform law governing the election of county officers, a provision in Laws 1899, page 26, section 5, authorizing the governor to appoint the county commissioners in the newly created county of Ferry, and that they should fill by appointment all other county offices is not unconstitutional, since the power to fill county offices provisionally in new counties is a necessary incident of the legislative power to create new counties: *Farquharson v. Yeargin*, 24 Wash. 549, 64 Pac. 717.

Art. 11, § 7. Tenure of office.—The fact that the incumbent has held office for two terms, and that the constitution (article 11, section 7), declares that "no county officer shall be eligible to hold his office more than two terms in succession," is immaterial, since his term does not end until his successor is elected and qualified: *State ex rel. v. Tallman*, 24 Wash. 426, 64 Pac. 759.

Art. 11, § 8. Salaries—Limitations.—An act shortening a term of office, or abolishing an office, which had been created by the legislature, is not a violation of the constitutional provision that "the salary of any county, city, town or municipal officer shall not be increased or diminished after his election or during his term of office; nor shall the terms of any such officer be extended beyond the period for which he is elected or appointed": *Bogue v. Seattle*, 19 Wash. 397, 53 Pac. 548; see *State v. Saillard*, 22 Wash. 267, 60 Pac. 651.

Official terms.—Where a county superintendent of schools was elected to office under a statute which provided that his "term of office shall begin on the second Monday in January next succeeding his election and continue for two years and until his successor is elected and qualified," and during his term the law was so changed as to make the term "begin on the first Monday in August next succeeding his election," such county superintendent is entitled to hold the office until the qualification of his successor for the term beginning in August, although thereby his term is made greater than two years, since under the provisions of the statute whereby he holds office he was to continue therein for more than two years, in case his successor was not elected and

qualified, and consequently the statute deferring the beginning of his successor's term from January to August would not be in violation of article 11, section 8, of the constitution, which prohibits the extension of the term of any county officer beyond the period for which he was elected: *State v. Tallman*, 24 Wash. 426, 64 Pac. 759.

Art. 11, § 10. Incorporation of municipalities.—The failure of a city clerk to post in each election precinct of the city notice of a proposed election for the adoption of charter amendments, as required by statute and ordinance, which were passed pursuant to a constitutional provision in regard to giving such notice but without specifying the manner thereof, will not invalidate the election, when it appears that notice had been published in all the daily papers of the city the requisite length of time, that the election was a matter of public notoriety and had been discussed by the people generally in their homes, and the result of the votes cast showed that the great body of the electors had expressed their will upon the adoption or rejection of the amendments.

Notice of a proposed election for the submission of charter amendments sufficiently specifies the object for which the election was called, even if it does not set out the proposed amendments, when it refers to the ordinance containing the proposed amendments as the basis for the giving of the election notice: *State ex rel. Mullen v. Doherty*, 16 Wash. 383, 58 Am. St. Rep. 39, 47 Pac. 958.

Municipal corporations, powers.—Where a state law merely prescribes the maximum penalty for the punishment of misdemeanors at a fine of five hundred dollars or imprisonment for not more than one year and specifies no minimum penalty, a city ordinance fixing a minimum penalty of twenty dollars for the punishment of like offenses does not conflict with the constitutional provision that city charters shall be subject to the control of general laws, nor with the charter provision that punishment for violation of the penal ordinances of the city "shall in no case exceed the punishment provided for by the laws of the state of Washington for misdemeanors": *Seattle v. Chin Let*, 19 Wash. 38, 52 Pac. 324.

Art. 11, §§ 14, 15. Public funds.—See note to article 8, section 7; *Bardsley v. Sternberg*, 18 Wash. 613, 52 Pac. 251, 524.

Art. 12, § 11. Banks—Liability of stockholders.—Under article 12, section 11, of the constitution, making each stockholder liable for all contracts, debts and engagements "accruing while they remain such stockholders," one who was not a stockholder in a banking corporation at

the time the corporate indebtedness was incurred or created cannot be subjected to the statutory liability of stockholders: *Shuey v. Holmes*, 21 Wash. 223, 57 Pac. 818.

There is no presumption that the indebtedness of a banking corporation was incurred after a stockholder acquired her shares, in view of article 12, section 11, of the constitution, making each stockholder liable for all contracts, debts and engagements "accruing while they remain such stockholders": *Id.*

Nor, in view of the same constitutional provision, is it a matter of defense in an action to enforce the stockholder's statutory liability in a banking corporation that she acquired her shares after its corporate indebtedness was incurred: *Id.*

There being no provision in the constitution or statutes for the method of determining the superadded liability imposed by article 12, section 11, of the constitution upon stockholders in banking corporations, the method of its enforcement is necessarily left to be determined by the courts: *Shuey v. Adair*, 24 Wash. 378, 64 Pac. 536.

Art. 12, § 19. Corporations, telegraph and telephone.—Article 12, section 19, of the state constitution, which declares the right of any corporation or individual to construct and maintain lines of telegraph and telephone upon the streets and highways within the state, that such lines shall be common carriers, and that the right of eminent domain is extended to them, is not self-operative, but by its own terms imposes the duty on the legislature of providing by general law reasonable regulations to give effect to the section, and hence confers no power to use the streets and highways other than as the legislature may provide: *State ex rel. v. Spokane*, 24 Wash. 54, 63 Pac. 1116.

There being no restriction on the legislative control of streets and highways contained in article 12, section 19, of the constitution, which declares the right of individuals and corporations to maintain lines of telegraph and telephone within the state, the provision in Ballinger's Code, section 4369, the statute passed pursuant to such constitutional declaration, "that where the right of way, as herein contemplated, is within the corporate limits of any incorporated city, the consent of the city council thereof shall be first obtained before such telegraph or telephone line can be erected thereon," is valid, and amounts to an authorization to the council to refuse, as well as consent, to such use of the streets, and is not intended as an authorization of power merely to prescribe reasonable and proper regulations for the construction and operation of such lines, inasmuch as the power

of regulation and control is amply conferred by Ballinger's Code, section 739, subdivision 7: *Id.*

Art. 12, § 22. Private corporations—Monopolies and trusts.—An ordinance granting a franchise for the construction and operation of a system of street railways, which authorizes the grantees to acquire existing railway lines and surrender their franchises, for the purpose of operating a new system under the proposed franchise, does not violate article 12, section 22, of the state constitution forbidding monopolies and trusts, by reason of the fact that portions of the existing lines in operation, and which may be absorbed under the proposed ordinance, are parallel and competing lines, which the grantees of the new franchise would thus be enabled to combine and consolidate: *Wood v. Seattle*, 23 Wash. 2, 63 Pac. 135.

Art. 15, § 1. Harbor areas.—Under article 15, section 1, of the constitution, forbidding the sale of harbor areas and providing that they "shall be forever reserved for landings, wharves, streets and other conveniences of navigation and commerce," the term "commerce" must be construed as modified by the employment of the term "navigation," and the commercial use of such areas must be restricted to such as are aids to navigation; consequently the erection of structures on such areas for the "curing and canning of fish, maintaining a retail and wholesale fish market and the storage of ice for packing and handling fish," are not "conveniences of navigation and commerce," and hence not permissible under the constitution: *State v. Bridges*, 19 Wash. 44, 52 Pac. 326.

Art. 15, § 2. Harbor improvements.—Under article 15, section 2, of the constitution, authorizing the legislature to "provide general laws for the leasing of the right to build and maintain wharves, docks and other structures upon the areas mentioned in section 1" of said article, the term "other structures" is governed by the rule of *eiusdem generis*, and falls within the genus "conveniences of navigation and commerce," and the statute (Laws 1897, p. 255, § 53), passed in pursuance thereof does not contemplate leases for any other purpose: *State v. Bridges*, 19 Wash. 44, 52 Pac. 326.

Under article 15 of the state constitution, prohibiting the sale or grant of harbor areas, except by lease, for not longer than thirty years, of the right to build and maintain wharves, docks and other structures, Laws 1899, page 225, providing that "the lessee of any part of such harbor area may at his or its option improve the same in such manner, subject to the

approval of the board, and to such extent, as such lessee shall elect," is invalid, because it vests the election to improve the harbor area in the lessee, while the constitution vests the option in the state: *State ex rel. Trimble v. Bridges*, 22 Wash. 98, 60 Pac. 66.

Art. 15, § 3. Extending streets over tide lands.—Under the authority given municipal corporations by article 15, section 3, of the constitution, to extend their streets over tide lands intervening between the harbor area and the corporate limits, it is only contemplated that the extension shall be in a direct line and of the same width as the street thus extended, and where a city attempts to run such street extension across the tide lands at an angle instead of a direct course, the attempted exercise of power is void: *Ilwaco v. Ilwaco Ry. Co.*, 17 Wash. 652, 50 Pac. 572.

The right given municipal corporations, by article 15, section 3, of the state constitution, to extend their streets over tide lands to and across the harbor areas reserved for purposes of commerce and navigation is not a continuing one; and where a city, at the time of platting the tide lands by the state, exercises its right under said constitutional provision by filing a plat extending every alternate street across the tide land, it is precluded from thereafter exercising the right of extending the remaining streets across the intervening tide lands, except by condemnation and payment: *State ex rel. Land Co. v. Bridges*, 19 Wash. 428, 53 Pac. 545, 547.

Art. 16, § 5. Permanent school fund.—Warrants drawn by the auditor upon the general fund of the state do not constitute bonds, in which the permanent school fund may be invested, within the meaning of section 5, article 16, of the constitution, which provides that "none of the permanent school fund shall ever be loaned to private persons or corporations, but it may be invested in national, state, county or municipal bonds"; hence, Laws 1899, page 53, authorizing the investment of the permanent school fund in state warrants is unconstitutional: *State ex rel. Hellar v. Young*, 21 Wash. 391, 58 Pac. 220.

Art. 17, § 1. Tide land—Navigable waters—Ownership of beds.—Article 17, section 1, of the constitution, which reserves title to the state in the beds of all navigable streams below the line of ordinary high-water mark, has reference only to such streams as are navigable for general commercial purposes, and not to those which are public highways merely for the floating of logs and timber products: *Watkins v. Dorris*, 24 Wash. 636, 64 Pac. 840.

Art. 27, § 2. Territorial laws continued in force.—Article 27, section 2, of the constitution, which provides that the laws in force at the time of its adoption, which are not repugnant to the constitution, shall remain in force until they expire or are

repealed by the legislature, cannot be construed as re-enacting a statute, but merely as continuing in force all valid laws which were then in existence: *State v. Ellis*, 22 Wash. 129, 60 Pac. 136.

INDEX TO STATE CONSTITUTION.

CONSTITUTIONAL AMENDMENTS.

proposal to amend art. 7, § 2.....	713
publication of proposed amendment to art. 7, § 2.....	713
vote upon adoption of amendment to art. 7, § 2.....	713

Alien Ownership of Land:

alien may before suit to divest his title convey good title to one authorized to take it, art. 2, § 33.....	718
domestic corporation—stock owned by, aliens, not within provision, art. 2, § 33	718
fishing licenses not within provision, art. 2, § 33.....	718
lease for ninety-nine years not within exception expressed is in violation of art. 2, § 33.....	718
lease to alien for forty-nine years void, art. 2, § 33.....	718
incapacity can be claimed by state only, art. 2, § 33.....	718
title taken in satisfaction of debt secured by mortgage, not within, art. 2, § 33	718

Annual State Tax:

exemptions of property from taxation, art. 7, § 1.....	721
franchises taxable, art. 7, § 1.....	722

Bill to Contain One Subject Only:

act abolishing municipal court—provision continuing to day certain, art. 2, § 19.....	717
act defining arson and attempted arson, and punishment for each implies, but on subject, art. 2, § 19.....	717
“act to amend section 5645, Ballinger’s Codes and statutes of Washington,” act held void for want of subject, art. 2, § 19.....	717
drainage ditches, assessments for benefits on land drained, art. 2, § 19.....	716
establishing school system—punishment of misdemeanor, art. 2, § 19.....	717
recording leases and conditional sales of personal property, art. 2, § 19....	717
sales under execution and decree—foreclosure of mortgages, art. 2, § 19..	717
taxation—delinquent certificates—guarantee of county, art. 2, § 19.....	717

Charging Juries:

charging that good character is not a convincing matter does not violate, art. 4, § 16	720
charging “that in making the assault he intended to use whatever force might be necessary to overcome the prosecuting witness, and accomplish his purpose,” art. 4, § 16.....	720

Charging Juries—Continued.

comment on evidence, art. 4, § 16....	720
comment on evidence not objected to, art. 4, § 16.....	720
other instances of remarks by court, art. 4, § 16.....	721
references to evidence not amounting to criticism or explanation does not violate, art. 4, § 16.....	721
remarks of court addressed to counsel as to facts of case, art. 4, § 16.....	721
so questioning witness as to disclose court’s opinion as to what evidence is, art. 4, § 16.....	721
statement of court what its notes showed was the testimony, violation of, art. 4, § 16.....	721
to say “testimony is silent” is not comment on evidence, art. 4, § 16....	721

Court Commissioners:

power to render judgment in causes where jury not required, art. 4, § 23.	721
---	-----

Credit not to be Loaned:

depositing public funds in bank, art. 8, § 7.....	724
issuing warrants in advance of performance of work, contract to refund, art. 8, § 7.....	724

Decisions of Causes, When to be Made:

entry of judgment six months after rendition, art. 4, § 20.....	721
---	-----

Election and Compensation of Officers:

provisional officers for new county, art. 11, § 5.....	724
--	-----

Election of Judges of Supreme Court—Term of Office:

six-year term applies to elected judges only, art. 4, § 3.....	719
--	-----

Eminent Domain:

bond cannot be substituted for compensation, art. 1, § 16.....	715
construction of drainage ditches is taking for public use, art. 1, § 16.	715
construction of trestle or bridge in street is a taking of private property of adjoining lot owner within, art. 1, § 16.....	715
reassessment of property for local improvements, according to benefits, art. 1, § 16.....	715
taking private property for county road by county commissioners, without judicial determination of question, public use, does not violate, art. 1, § 16.	715
taxation by city of agricultural lands within city limits is not taking private property without just compensation, art. 1, § 16.....	715

Equality of Taxation:

- bank stock held to be credits, art. 7, § 2... 722
- deduction of debts from taxation, art. 7, § 2... 722
- exemptions in inheritance tax law, art. 7, § 2... 722
- taxation of inheritances, art. 7, § 2... 722
- tax on trades and professions, art. 7, § 2... 722
- uniform methods not required, art. 7, § 2... 722

Excessive Bail:

- sentence of fifteen years for burglary, not cruel or excessive punishment, art. 1, § 14... 715

Extension of Streets Over Tide Lands:

- extension must be in direct line of street extended, art. 15, § 3... 726
- right of extension can be exercised once only, art. 15, § 3... 726

Extra Compensation to Public Officers:

- extra compensation to legislative employees, after service rendered, art. 2, § 25... 717
- witness to policemen, art. 2, § 25... 718

Freedom of Speech:

- contempt of court in publications, art. 1, § 5... 714

Governor—Term of Office:

- lieutenant governor, governor on death of governor for full term, art. 3, § 2... 718

Harbor Areas:

- used for purposes of navigation only, art. 15, § 1... 726

Harbor Improvements:

- leases of, confined to conveniences of navigation and commerce, art. 15, § 2... 726
- control of state cannot be surrendered, art. 15, § 2... 726

Incorporation of Municipalities:

- adoption of charter amendments, notice of election for, art. 11, § 10... 725
- misdemeanors, ordinance fixing fine, art. 11, § 10... 725

Impairing Obligation of Contracts:

- ordinance granting franchise is a contract within the provisions of art. 1, § 23... 716
- redemption on foreclosure given after making mortgage, art. 1, § 23... 716

Imprisonment for Debt:

- committing complainant for cost in case of unfounded criminal charge, art. 1, § 17... 715
- provisional alimony in divorce proceeding, not a debt, art. 1, § 17... 715

Investment of School Funds:

- state warrants not within provision of constitution, art. 16, § 5... 726

Judiciary:

- city council as board of equalization and judges of validity of reassess-

Judiciary—Continued.

- ments for public improvements do not exercise judicial powers, art. 4, § 1... 719

Jurisdiction of Superior Courts:

- concurrent, with municipal courts in misdemeanors committed in cities, art. 4, § 6... 720
- reception of verdict on nonjudicial days, not a judicial act, art. 4, § 6... 720
- writ of certiorari—issue a judicial act, art. 4, § 6... 720

Jurisdiction of Supreme Court:

- amount in controversy, several actions by several plaintiffs united for trial, art. 4, § 4... 719
- dismissal for want of jurisdiction judgment for costs only, art. 4, § 4... 720
- limitation of two hundred dollars applies to amount sued for, art. 4, § 4... 720
- mandamus—amount in controversy, art. 4, § 4... 720
- not self-executing, art. 4, § 4... 718
- prohibition does not lie to control ministerial or administrative acts, art. 4, § 4... 719
- prohibition, jurisdiction in cases in court on appeal, art. 4, § 4... 719
- prohibition—two hundred dollars limitation applies to jurisdiction in, art. 4, § 4... 719

Legislation Amendments:

- including matter in addition to amendment, art. 2, § 37... 718

Liabilities of Stockholders in Banks:

- presumptions as when incurred, art. 12, § 11... 725
- stock acquired after debt incurred, art. 12, § 11... 725
- method of determining liability, art. 12, § 11... 725
- stockholder at time liability incurred, only, art. 12, § 11... 725

Limitation of Municipal Indebtedness:

- cash and uncollected taxes to be deducted, art. 8, § 6... 730
- computation, first and second class, art. 8, § 6... 723
- expenses necessary to maintain existence not included, art. 8, § 6... 723
- necessary expenses, mandatory by constitution not included, art. 8, § 6... 723
- necessary expenses, not included, art. 8, § 6... 722
- three-fifths majority, how interpreted, art. 8, § 6... 723
- water, lights and sewers, art. 8, § 6... 723
- waterworks bond payable from revenues of system, not debt, art. 8, § 6... 723
- limitation on state debt, art. 8, § 1... 722

Lotteries and Divorce:

- mandatory and self-executing, art. 2, § 24... 717

Monopolies and Trusts:

- franchises to street railways, surrender of franchise, acquisition of existing lines, art. 12, § 22... 726

New Counties:

new county from territory detached
from old, presumption as to popula-
tion, art. 11, § 3..... 724

Pardoning Power, art. 3, § 9..... 719

Personal Rights:

due process of law, art. 1, § 3..... 714
personal liberty and property, art. 1,
§ 3..... 713
police power, art. 1, § 3..... 714
restriction on sale of property, art. 1,
§ 3..... 714
right of contract, deprivation of, art.
1, § 3..... 714
servants' and laborers' priorities, art.
1, § 3..... 713

Political Power:

taxation of inheritances, art. 1, § 1. 713

Private Use of Public Funds, art. 11, §
14..... 725

Prosecution by Information:

preliminary examination not required
under this provision, art. 1, § 25... 716

Religious Freedom:

Sunday laws, art. 1, § 11..... 714

Rights of Accused Persons:

continuance to procure attendance of
witnesses, within right guaranteed,
art. 1, § 22..... 716
meeting witness face to face, art. 1, §
22... 716
nature and cause of accusation, art. 1,
§ 22..... 716
to appear and defend in person,
abridged by being manacled during
trial, art. 1, § 22..... 716

Rights of Accused Persons:

twice in jeopardy, art. 1, § 9..... 714

Salaries and Limitations Affecting:

abolishing office, shortening term, art.
11, § 8..... 724
change of time of beginning, lengthen-
ing term, art. 11, § 8..... 724

Special Privileges and Immunities:

excepting from operation of Sunday
law, hotels, drugstores, etc., art. 1,
§ 12..... 715

Special Privileges and Immunities—Cont'd.

jury commissioners, candidates selected
by bar, art. 1, § 12..... 714
laborers' liens do not violate, art. 1,
§ 12..... 714
license taxes on classes, art. 1, § 12... 714
refusal to grant franchise to use
streets for electricity, art. 1, § 12... 714
restricting sales of stocks of merchan-
dise in bulk, art. 1, § 12..... 714

State Ownership of Tide Lands:

navigable streams, what are, art. 17,
§ 1..... 726

**Superior Court—Election of Judges—Terms of
Office:**

vacancy—election to fill, term, art. 4,
§ 5..... 720

Supreme Court:

number of judges may be increased
and decreased, art. 4, § 2..... 719

Taxes, How Levied:

section 3762, Ballinger's Code, vio-
lates, art. 7, § 5..... 722

Telegraph and Telephone Companies:

consent of city council, discretion, art.
12, § 19..... 725
not self-operative, art. 12, § 19..... 725

Tenure of Office:

when term ends, art. 11, § 7..... 724

Territorial Laws Continued in Force:

does not re-enact laws, but continues
existing ones, art. 27, § 2..... 727

Trial by Jury:

does not prevent waiver of jury, art.
1, § 21..... 716
prosecutions for violation of city
ordinances, not within provision, art.
1, § 21..... 716
quo warranto not within the right
guaranteed by, art. 1, § 21..... 715
withdrawal of, from jury and decision
of case by court upon uncontra-
dicted evidence, not a violation of,
art. 1, § 21..... 715

Veto Power:

item in appropriation — subsequent
legislation on same subject, effect,
art. 3, § 12..... 719

GENERAL INDEX.

Abatement—See CIVIL PROCEDURE IN COURTS OF RECORD (parties to actions); POLICE AND SANITARY REGULATIONS (nuisances).

Abduction—See CRIMES AND PUNISHMENTS (offenses against person kidnapping).

Aberdeen—See STATE LANDS (tide and shore lands).

Aberdeen Harbor Lines.—See STATE LANDS.

Aberdeen Tide and Shore Lands—See STATE LANDS.

Absconding Debtor—See PROVISIONAL REMEDIES (attachments).

Acceptance—See BILLS OF EXCHANGE AND PROMISSORY NOTES; BENEVOLENT REFORMATORY AND PENAL INSTITUTIONS (insane asylums); STATE LANDS (arid lands).

Account—See PROBATE LAW AND PROCEDURE; PROCEDURE, CIVIL, IN COURTS OF RECORD (limitation of actions).

Acknowledgments—See RIGHTS OF PROPERTY (deeds and other instruments affecting lands).

Action—See ACTIONS BY AND AGAINST PUBLIC CORPORATIONS; ACTIONS ON OFFICIAL BONDS; CIVIL PROCEDURE IN COURTS OF RECORD (forms of; commencing); COUNTIES (Chelan County; Ferry County); POSSESSORY ACTIONS AND QUIETING TITLE (forcible entry and detainer; ejectment); WASTE, TRESPASS AND NUISANCE; PROCEDURE, CIVIL, IN COURTS OF RECORD (limitation of actions).

ACTIONS AGAINST STATE.

claim against state defined, § 5608... 602

ACTIONS BY AND AGAINST PUBLIC CORPORATIONS.

actions to compel issue of delinquent certificate, sufficient tender in, § 5678..... 610
actions to enjoin taxes, failure to appear before board of equalization, § 5678..... 609
actions to enjoin taxes, tender, § 5678..... 609
action to enjoin taxes, tender of just tax only required, § 5678..... 610
action to enjoin void tax, tender not required, § 5678..... 610

ACTIONS BY AND AGAINST PUBLIC CORPORATIONS—Continued.

action to remove cloud by assessments, limitations, § 5678..... 610
defective bridge, damages occasioned by, § 5674..... 609
judgments against, how enforced, § 5676..... 609
negligence of employee, liability for, § 5674.... 609
prerequisite to action, § 5674..... 609

ACTIONS ON OFFICIAL BONDS.

leave to sue, limitation, § 5686..... 610
leave to sue for state not required, § 5686..... 610

Adams County—See JUDICIAL DEPARTMENT (superior courts).

Administrators—See PROBATE LAW AND PROCEDURE (letters testamentary and of administration).

Adoption—See PROBATE LAW AND PROCEDURE (orphans and abandoned minors.)

Adultery—See CRIMES AND PUNISHMENTS.

Agent—See BILLS OF EXCHANGE AND PROMISSORY NOTES; CRIMES AND PUNISHMENTS (offenses against property); OFFICE (bonds, official); POLICE AND SANITARY REGULATIONS (fraternal and beneficiary associations; insurance companies).

AGRICULTURE.

Hops, Inspection of:
appointment of inspector, § 3565..... 410
compensation of inspector, § 3565..... 410
duties of inspector, § 3565..... 410

Sugar Bounty:
beet sugar, bounty on, § 3568..... 410
how paid, § 3570..... 411
to whom paid, § 3571..... 411
when paid—conditions—inspection, § 3569..... 411

Canada Thistles:
application of act to cities and towns, § 3580..... 412
destruction to be road work, § 3580.. 412
expenses of destruction—taxation of premises with, § 3580.... 412
expenses of supervisor in enforcement of act—payment of, § 3580..... 412
owners and occupiers of land—duty to destroy, § 3580..... 411

AGRICULTURE—Continued.

penalties for failure to destroy, § 3580	411
penalties for failure to perform duties under act, § 3580	413
road supervisors, duties in respect to destruction of, § 3580	412
State Fair—objects of, § 3381	389
time and place of meeting, § 3387	390
County Agricultural association and Fairs, authorization of, § 3391	390
disbursement of tax for, § 3391	390
tax levy for, § 3391	390

Agricultural College—See EDUCATION (state agricultural college).

Alimony—See DIVORCE AND ALIMONY.

Ambiguities—See BILLS OF EXCHANGE, etc.

Amendments—See CIVIL PROCEDURE IN COURTS OF RECORD (amendments of pleadings); LIENS AND ENFORCEMENT OF LIENS (laborers on logs and timber); MINES AND MINING (state geological survey); CONSTITUTIONAL AMENDMENTS; PROVISIONAL REMEDIES.

Anarchy—See CRIMES AND PUNISHMENTS (offenses against peace).

Animals—See DOMESTIC ANIMALS.

Answer—See CIVIL PROCEDURE IN COURTS OF RECORD (pleadings); EVIDENCE (examination of parties).

Appeal—See CITIES AND TOWNS (plats, additions and streets; vacation of streets; reassessments; assessment for local improvements); DRAINAGE DISTRICTS; EDUCATION (sites for schoolhouses); EMINENT DOMAIN; HIGHWAYS (ways of necessity for logging; paved roads); JUSTICES' COURTS (procedure in); PRIVATE CORPORATIONS (railway companies); EMINENT DOMAIN; PRIVATE DITCHES; REVENUE AND TAXATION (delinquency certificates; foreclosure); STATE LANDS (tide and shore lands; first class; appraisement and sale).

APPEALS TO SUPREME COURT.**Allowed When:**

appealable interest, executor, § 6500	648
appealable order, what is, § 6500	646
appeal before entry of judgment, § 6500	648
appeal by state in criminal cases, § 6500	646
appeal by state, when not allowed, § 6500	646
appealable interest, § 6500	647
final judgments, appeal from, § 6500	644
final judgment, what is, § 6500	645
final order after judgment, what is § 6500	645
from judgments and orders of superior courts, § 6500	644

APPEALS TO SUPREME COURT—Cont'd.

jurisdiction of supreme court, amount in controversy, § 6500	649
orders affecting substantial rights, § 6500	645
consolidating causes for trial, § 6500	648
denying judgment on proceeding against garnishee, on motion, § 6500	647
denying or granting injunction, § 6500	644
discharging attachment not appealable, § 6500	645
discharging jury and restoring case to calendar, not appealable, § 6500	648
discharging or refusing to discharge attachment, § 6500	645
dissolving attachment, § 6500	647
fixing compensation of administrator, § 6500	648
fixing day of execution on conviction of murder not appealable, § 6500	648
maintenance of widow from husband's interest in community, § 6500	648
granting and continuing temporary injunction, § 6500	647
granting new trial, § 6500	647
in appointment of receiver, § 6500	645
in probate, denying attorney's fee not appealable, § 6500	648
dismissal after demurrer sustained, § 6500	648
quashing summons, § 6500	647
refusing to vacate final decree, § 6500	647
refusing to vacate judgment, § 6500	647
refusing to vacate order of arrest, § 6500	644
remanding prisoner on habeas corpus, § 6500	648
sustaining demurrer to part only of affirmative defenses not appealable, § 6500	648
striking complaint, § 6500	647
vacating judgment, § 6500	647
vacating judgment not appealable, § 6500	648
prior orders made in cause, reviewed when, § 6500	648
second appeal, first invalid, § 6500	645

Bond for Costs:

cash in lieu of, § 6505	653
conditions, sufficiency, § 6506	653
exceptions, where made, § 6505	653
execution of, by whom, § 6505	652
form of, § 6505	652
in contempt proceedings, § 6505	653
jurisdictional, § 6505	652
time jurisdictional, § 6505	652
who must join in, § 6505	652

Briefs:

assignments of error in, § 6514	661
filing and serving, § 6514	659
form and substance of, § 6514	660
striking from files, § 6514	661
time for filing, § 6514	660

APPEALS TO SUPREME COURT—Cont'd.

Costs on Appeal—printing briefs, § 6528	668
Criminal Cases—effect of appeal in, § 6529	668
Damages—on affirmance of judgment, § 6522	667
Effect of Judgment—reversal—subsequent proceedings of trial court, § 6525	668
Heard on Merits—immaterial errors disregarded, § 6535	668
Judgment—against sureties on bond, on affirmance, § 6523	667
Jurisdiction:	
jurisdiction pending appeal, § 6515	661
Motions to Dismiss:	
appeal taken out of time, § 6517	662
dismissal—grounds for—cessation of controversy, § 6517	661
for want of exceptions, § 6517	662
hearing and disposition of, § 6518	663
insufficient bond—surety company without license, § 6517	662
Notice of:	
designation of judgment or order, § 6503	650
filing in clerk's office, § 6503	651
form, § 6503	650
in open court, § 6503	651
proof of service, § 6503	651
service, § 6503	649
to join in existing appeal, § 6504	651
to whom given, § 6503	650
second notice, effect of, § 6503	650
Parties, Designation of:	
parties, designation of, § 6501	649
Powers of supreme court on appeal, § 6521	667
Record:	
filing, time for, § 6513	658
sufficiency of, § 6513	657
what constitutes, § 6513	656
Remittitur—may be recalled, § 6524	668
reversal—mandate—power of trial court, § 6526	668
effect on purchaser under decree reversed, § 6526	668
bona fide purchaser, who is, right of, § 6526	668
Supersedeas Bond:	
exceptions to sureties, § 6510	655
fixing amount, § 6506	655
in prohibition, § 6506	654
justification of sureties, § 6509	655
operation of, § 6506	654
Time of Taking:	
time in which to take appeal, § 6502	649
What may be Reviewed, § 6520	664
harmless error, § 6520	666
rules of decision, § 6520	666
waiver of error, § 6520	667
Appearance —See CIVIL PROCEDURE IN COURTS OF RECORD (commencing action).	

Apportionment—See LEGISLATIVE (representatives; senators); DRAINAGE DISTRICTS.

Apprentices—See POLICE AND SANITARY REGULATIONS (barbering; pharmacy, practice of).

Appropriations—See BENEVOLENT REFORMATORY AND PENAL INSTITUTIONS (Washington Volunteers); EDUCATION (agricultural college); EMPLOYEES, PROTECTION FOR (commissioner of labor); FISHERIES (Klickitat river hatchery; oysters, propagation and gathering); HARBORS AND WHARVES (improvement of harbors); HIGHWAYS (Marble Mount State Road); POLICE AND SANITARY REGULATIONS (inspection of petroleum oils); STATE CAPITOL BUILDING; WATER RIGHTS.

Arbitration—See ISSUES, TRIAL AND JUDGMENT.

Arid Lands—See STATE LANDS.

Arms—See MILITIA (uniforms and equipments).

Armories—See MILITIA.

Arraignment—See CRIMINAL PROCEDURE.

Arson—See CRIMES AND PUNISHMENT (offenses against property).

Assault—See CRIMES AND PUNISHMENTS (offenses against person).

Assessments—See CITIES AND TOWNS (sewerage and drainage); CITIES OF FIRST CLASS; CITIES OF THIRD CLASS; DRAINAGE DISTRICTS; HIGHWAYS (navigable rivers, improvement of); MINES AND MINING; PRIVATE CORPORATIONS (insurance companies, mutual, fire and marine); REVENUE AND TAXATION (listing and valuation); ACTIONS BY AND AGAINST PUBLIC CORPORATIONS.

Assignee—See SPECIAL PROCEEDINGS (assignments for benefit of creditors).

Assignment—See RIGHTS OF PROPERTY; SPECIAL ~~PROCEEDINGS~~. *Pleading*

Assignment for Benefit of Creditors—See SPECIAL ~~PROCEEDINGS~~. *Pleading*

Associations—See POLICE AND SANITARY REGULATIONS (building and loan associations; cemeteries; fraternal and beneficiary); AGRICULTURAL (county associations).

Asylum—See BENEVOLENT REFORMATORY AND PENAL INSTITUTIONS.

Attachment of Property—See PROVISIONAL REMEDIES.

Attempts to Commit Crime—See CRIMES AND PUNISHMENTS (offenses not specially provided for).

Attorneys at Law—See COURTS.

Attorney General.—See MILITIA, POLICE AND SANITARY REGULATIONS (dairy products; state food commission).

Auditor—See COUNTY GOVERNMENT; EXECUTIVE DEPARTMENT; REVENUE AND TAXATION (collection of taxes; levy of tax); SALARIES OF COUNTY OFFICERS.

Baggage—See PRIVATE CORPORATIONS (railway and transportation companies).

Bakeshops—See POLICE AND SANITARY REGULATIONS.

Baker Hatchery—See FISHERIES (hatcheries.)

Ballot—See ELECTIONS.

Banks—See BILLS OF EXCHANGE AND PROMISSORY NOTES; PRIVATE CORPORATIONS (organization and management); REVENUE AND TAXATION, (listing and valuation).

Barbering on Sunday—See CRIMES AND PUNISHMENTS (public morals, etc.).

Barbering, Practice of—See POLICE AND SANITARY REGULATIONS.

Barratry—See CRIMES AND PUNISHMENTS (public trade; policy and police economy).

BENEVOLENT, REFORMATORY AND PENAL INSTITUTIONS:

Indigent Soldiers, burial of, § 2645.... 287

Insane Asylums:

acceptance of donations to, § 2654b... 288

Soldiers' Home:

admission—who entitled to, § 2632.... 286

establishment of, § 2631..... 286

Indian soldiers, admission of, § 2632a. 286

state board of control—creation of,

§ 2622..... 280

duties and powers of board, § 2624... 281

emoluments of officers of institutions,

§ 2624b..... 283

employment of architect, § 2624e.... 284

management of property, § 2624c.... 283

oath and bond of members, § 2622a... 280

purchase of supplies, § 2424d..... 283

records to be kept by board, § 2624f.. 284

removal from office, § 2624h..... 285

repealing clause, § 2624i..... 285

reports by board, § 2624g..... 285

salaries of board, § 2624a..... 282

State Penitentiary:

duties of warden and board of trustees; suits, § 2736..... 288

employments of convicts, § 2747a.... 289

warden's salary, § 2741..... 289

State Reform School:

juvenile offenders—jurisdiction of

municipal courts to commit to, §

2721..... 288

BENEVOLENT, REFORMATORY AND PENAL INSTITUTIONS—Continued.

commitment to, when not warranted,
§ 2721..... 288

Washington Volunteers:

appropriation for burial of, § 2645a... 287

provisions for burial of, § 2645a..... 287

Whitman Mission:

acquire, commission to, § 2638..... 286

Big Quillicene River—See FISHERIES (hatcheries).

BILLS OF EXCHANGE AND PROMISSORY NOTES.

acceptance for honor, how made, §

3650..... 435

acceptor for honor, liability of, §

3650..... 435

acceptance in general, § 3650..... 432

acceptance for honor, what is, § 3650.. 434

acceptance of bill, what is, § 3650... 431

acceptance, qualified, § 3650..... 432

accommodation party, who is, § 3650.. 418

agency in making and negotiating, §-

3650..... 417

agent or broker negotiating without

indorsement, liability of, § 3650.... 423

alterations, material, § 3650..... 430

ambiguities in—rules of construction,

§ 3650..... 417

ante or post dated, not invalid, § 3650. 416

bearer, indorsement to, special, effect

of, § 3650..... 420

bill accepted for honor, when mature,

§ 3650..... 435

bill, joint drawees, § 3650..... 430

bill not assignment of fund, § 3650.. 430

bill protested for honor must be pro-

tested for nonpayment when, § 3650. 435

bill protested for honor, presented for

payment for honor, how made, § 3650 435

bill, when deemed promissory note, §

3650..... 431

bills in set, what are, § 3650..... 436

bills of exchange, what are, § 3650... 430

blanks may be filled by holder, when,

§ 3650..... 416

bona fide purchaser of note, § 3650.... 438

cancellation, erroneous—burden of

proof, § 3650..... 430

conditional indorsement, payor may

disregard, § 3650..... 420

date does not affect negotiability, §

3650..... 414

date of, prima facie correct, § 3650... 415

delivery essential, authority, § 3650.. 416

delivery essential to validity, § 3650.. 416

discharge of instruments, when and

how effected, § 3650..... 429

dishonored by nonacceptance, § 3650.. 433

dishonor, notice of, § 3650..... 426

drawer, when discharged, § 3650..... 432

failure of consideration, defense, §

3650..... 418

foreign bills, must be protested, § 3650 433

forgery, effect of, § 3650..... 418

**BILLS OF EXCHANGE AND PROMIS-
SORY NOTES—Continued.**

general provisions—definitions, § 3650.	437
grace, days of, § 3650.....	438
grace, not allowed, § 3650.....	425
holder for value, who is, § 3650.....	418
holder in due course—title—defenses against, § 3650.....	421
holder in due course, presumption of, § 3650.....	422
holder in due course, who is, § 3650..	421
holder may renounce right to, § 3650.	430
holder may sue in own name, § 3650..	421
holder not in due course, rights of, § 3650.....	421
indorsee's name misspelled, etc., ef- fect, § 3650,.....	420
indorsements, blank and special, § 3650	419
indorsement by noncompetent, § 3650..	417
indorsement, holder may strike, effect of on subsequent indorsers, § 3650.	420
indorsement, how made, § 3650.....	418
indorsement in representative capacity, § 3650.....	420
indorsement, nature of, § 3650.....	419
indorsement of instrument negotiable by delivery, liabilities of, § 3650....	423
indorsement of, payable to two or more, by all, § 3650.....	420
indorsement, restrictive, § 3650.....	419
indorsement, special, § 3650.....	419
indorsement to "cashier," effect, § 3650.....	420
indorsement, what is, § 3650.....	419
indorser unqualified, warrants, § 3650.	423
indorsers' liability as to each other, 3650.....	423
inland bills, are what—foreign bills, § 3650.....	431
"I promise to pay," effect of, § 3650.	417
language of act not essential—intent to govern, § 3650.....	415
negotiability continues, when, § 3650.	420
negotiable, when, § 3650.....	413
negotiated, when paper is, § 3650.....	418
negotiator by delivery or qualified in- dorsements, warrants what, § 3650..	423
negotiator by delivery, warrants, § 3650.....	423
non-negotiable instruments, § 3650...	414
notice of dishonor actually received, § 3650.....	428
notice of dishonor, bankrupts, § 3650.	427
notice of dishonor by agent, § 3650...	426
notice of dishonor by mail, presump- tions, § 3650.....	427
notice of dishonor by mail when ad- dress on note, § 3650.....	428
notice of dishonor, deceased parties, § 3650.....	426
notice of dishonor, delay in giving ex- cused when, § 3650.....	428
notice of dishonor, how given, § 3650.	426
notice of dishonor, joint parties, § 3650.....	427
notice of dishonor not required to drawers, when, § 3650.....	428

SUPP. WASH. CODE—47

**BILLS OF EXCHANGE AND PROMIS-
SORY NOTES—Continued.**

notice of dishonor, partners, § 3650..	427
notice of dishonor to prior indorsers, § 3650.....	427
notice of dishonor, to whom given, § 3650.....	426
notice of dishonor, when dispensed with, § 3650.....	428
notice of dishonor, when given, § 3650.	427
notice of dishonor, waiver of, § 3650..	428
notice of dishonor, writing not re- quired, § 3650.....	426
notice of nonacceptance, effect, § 3650.	429
order on particular fund, not uncon- ditional, § 3650.....	414
payable at bank, equivalent to order on bank for payment on account, § 3650.....	425
payable on demand, defined, § 3650...	415
payable to order, defined, § 3650.....	415
payment for honor, § 3650.....	435
payment in due course, § 3650.....	426
payment of obligations, in lawful money, provision unconstitutional, § 3650.....	438
presentment for acceptance, by whom made, § 3650.....	432
presented for acceptance, when to be, § 3650.....	433
presentment for payment, by whom made, § 3650.....	424
presentment for payment, delay in, § 3650.....	425
presentment for payment, place of, § 3650.....	424
presentment for payment, when made, § 3650.....	424
presentment for payment, when neces- sary, § 3650.....	424
presentment for payment, when un- necessary, § 3650.....	425
presentment, when excused, § 3650...	433
presumption of negotiation before due, § 3650.....	420
prior holder receiving paper back may renegotiate, § 3650.....	421
promissory notes and checks, § 3650...	436
protest, by whom made, § 3650.....	434
protest, copy used in, when, § 3650...	434
protest dispensed with, when, § 3650.	434
protest, effect of bankruptcy as to, § 3650.....	434
protest for honor, whose honor, § 3650.	435
protest, when made, § 3650.....	434
protest, where made, § 3650.....	434
provisions of act not retroactive, § 3650.....	438
public securities, not applicable to, § 3650.....	423
qualified indorsement, effect of, § 3650	419
referee in case of need, § 3650.....	431
restrictive indorsement, rights under, § 3650.....	419
right of action on, accrues when, § 3650.....	425

BILLS OF EXCHANGE AND PROMISSORY NOTES—Continued.

- rights under indorsement restrictive, § 3650..... 419
- signature essential, § 3650..... 417
- stranger signing in blank before delivery, liable as indorser, when, § 3650..... 422
- stranger to paper signing, deemed indorser, § 3650..... 422
- time, rule for computation of, § 3650. 425
- undertaking of acceptor, § 3650..... 422
- undertaking of drawer, § 3650..... 422
- undertaking of maker, § 3650..... 422
- value presumed, § 3650..... 418

Bill of Exceptions—See ISSUES, TRIAL AND JUDGMENT (exception).

Bill of Lading—TRADE AND COMMERCE.

Birds—See CRIMES AND PUNISHMENT (game law).

Blacklisting—See CRIMES AND PUNISHMENTS (offenses against the person).

Blaine Tide Lands—See STATE LANDS.

Board of Dental Examiners—See POLICE AND SANITARY REGULATIONS (practice of dentistry).

Board of Health—See State Board of Health, in POLICE AND SANITARY REGULATIONS; County Boards of Health, in same.

Board of Library Commissioners—See EDUCATION (state library commission).

Board of Oyster Land Commissioners—See STATE LANDS (leasing oyster lands).

Board of Pharmacy—See POLICE AND SANITARY REGULATIONS (pharmacy, practice of).

Boats—See LIENS AND ENFORCEMENT OF LIENS.

Bona Fide Purchaser—See APPEAL (reversal); BILLS OF EXCHANGE, etc.; RIGHTS OF PROPERTY (deeds, etc.).

Bonds for Costs—See APPEALS TO SUPREME COURT.

Bonds, Municipal—See CITIES AND TOWNS (bonds for local improvements; waterworks); EDUCATION (bonds of school districts; school revenues); FINANCE; MILITIA (armories); STATE CAPITOL BUILDING.

Bonds, Official—See OFFICERS.

Boom Companies—See PRIVATE CORPORATIONS.

Boundary—See COUNTIES.

Bounties—See AGRICULTURE (sugar bounty).

Bribery—See CRIMES AND PUNISHMENTS (suffrage).

Bridges—See HIGHWAYS (bridges on county roads).

Briefs—See APPEAL TO SUPREME COURT.

Building and Loan Associations—See POLICE AND SANITARY REGULATIONS; PRIVATE CORPORATIONS.

Bureau of Labor—See PROTECTION TO EMPLOYEES.

Burglary—See CRIMES AND PUNISHMENTS (offenses against property).

Butter—See POLICE AND SANITARY REGULATIONS (dairy products).

Canada Thistles—See AGRICULTURE.

Candidates—See ELECTIONS (nominations).

Capitol Buildings—See STATE CAPITOL BUILDING.

Catching and Selling Fish—See FISHERIES.

Cemetery—See POLICE AND SANITARY REGULATIONS.

Certiorari—See SPECIAL PROCEEDINGS.

Challenge—See ISSUES, TRIALS AND JUDGMENTS (trials of civil actions).

Change of Venue—See CIVIL PROCEDURE (venue of actions).

Charitable Institutions—See BENEVOLENT, REFORMATORY AND PENAL INSTITUTIONS.

Chattel Mortgage—See RIGHTS OF PROPERTY, LIENS AND ENFORCEMENT OF LIENS.

Chehalis County—See COUNTIES.

Chelan County—See CRIMES AND PUNISHMENTS; JUDICIAL DEPARTMENT (superior courts).

Child Labor—See CRIMES AND PUNISHMENTS (public health, etc.).

CITIES AND TOWNS.

- Advancement of in Class:
 - notice of election for, § 723..... 45
 - petition for election for, § 723..... 45
 - Annexation of other, § 708..... 43
 - Annexation of territory, invalidity, § 708..... 41

- Bonds for Local Improvements—Authorized:
 - application of levies as to maturity of bonds, § 1185..... 85
 - assessments to pay for improvements, § 1185d 83
 - coupons, how executed, § 1185b..... 83
 - denomination of bonds, § 1185b..... 83
 - disposal of bonds, § 1185c..... 83
 - interest, rate, how payable, § 1185b. 82
 - issue provided for by ordinance, § 1185b.. 82

CITIES AND TOWNS—Continued.

liability of city on bonds, § 1185e..	85
notice of abutters of issue, § 1185a..	83
notice, sufficiency of, § 1185.....	85
payment of bonds and interest, § 1185g	84
powers conferred cumulative, § 1185h	84
redemption from assessments before issue of, § 1185e.....	83
remedy of holder for city's neglect, § 1185f....	84
Classification of:	
unclassified, § 719.....	43
assessments for improvement by, § 719....	44
powers of defined, § 719.....	43
sewers and drains, § 719.....	44
taxes in, § 719.....	44
Consolidation of, election for, § 709.	42
existing indebtedness of, § 709.....	41
name of consolidated town, § 709....	42
notice of election for, § 709.....	42
ordinance of consolidation, § 709....	42
petition for election to, § 709.....	42
record of consolidation, § 709.....	42
Enforcement of Assessments—Refund- ing Warrants:	
limitations on operation of act, § 1163a....	82
payment of assessments with warrants on improvement fund, § 1163a....	81
provisions of act cumulative, § 1163a	82
General Provisions:	
marshal, election of, term of office, construction by court, § 1291.....	91
ordinances, copies of as evidence, § 1299....	91
Organization of by Incorporation, § 701	40
boundaries and survey for, § 701....	41
county commissioners' duties in, § 701	40
expenses of incorporation, § 701.....	41
illegal incorporation, contracts of val- idated, § 705.....	41
petition for incorporation, § 701.....	40
proceedings to incorporate, § 701....	40
report of survey for, § 701.....	41
validation of attempted incorporation of, § 705.....	41
Plats, Addition and Streets:	
altering and replatting, § 1267b....	90
appeal from decision of board or council, § 1267b.....	91
costs of hearing, etc., § 1267b....	90
damages and benefits, § 1267b.....	90
hearing of petition, § 1267b.....	90
new plat or replat, filing of, § 1267b	90
notice of hearing petition, § 1267b.	90
petition for, § 1267b.....	90
provisions cumulative, § 1267b....	91
duty of city in relation to de facto streets, § 1264.....	88
effect of recording plat, as to fee of streets and highways, § 1264.....	88
vacation of streets and alleys, § 1267a	89

CITIES AND TOWNS—Continued.

hearing petition, notice, § 1267a..	89
hearing petition, time for fixed by resolution, § 1267a.....	89
ownership of land vacated, § 1267a	89
petition for vacation, § 1267a.....	89
vacation, by ordinance, § 1267a....	89
validating contracts for private use of streets, § 1265a.....	88
Public Health:	
boards of health, duties of, § 1237b..	85
penalties for neglect of physicians, § 1237c....	86
physicians, duties of, § 1237a.....	85
tuberculosis, sanitary rules respecting § 1237c	86
plumbers—examining board of, § 1249	86
examination of applicants, § 1250..	87
inspectors of plumbing, appointment of, § 1251.....	87
license fees, how disposed of, § 1254	88
license, how obtained, § 1248.....	86
penalties, § 1253.....	88
plumbers to be licensed, § 1247.....	86
plumbing and drainage regulations by board of health, § 1252.....	87
Reassessments:	
appeal from confirmation of, § 1147..	81
collateral attack of, § 1142.....	79
due process of law, notice of, § 1142..	79
evidence of invalidity of prior assess- ment, § 1139....	78
interest on prior assessments must be included, § 1144.....	80
interest on prior assessments, § 1139..	78
limitation of actions to enforce, § 1150	81
mode of assessing benefits, § 1143....	80
objections to, by whom heard, § 1143..	79
property subject to assessment, § 1139	79
requirements of ordinance for, § 1140	79
validity of prior assessment, evidence of, § 1139.....	79
Renewal of Sidewalks:	
abutting property liable for, § 975....	66
abutting property, what is, § 975....	67
lien for, § 975.....	67
notice to property owner, § 975.....	67
when and how made, § 975.....	66
Sewers and Drains in Cities Other than First Class:	
by entire city or by districts, § 1103...76	
cost paid by special assessment or by bonds, § 1103.....	76
plans for, adopted by ordinance before contract, § 1103.....	76
Water and Lighting Plants, Street Rail- ways:	
power to construct, condemn, pur- chase, acquire and maintain, § 1076	70
bonds for, § 1077.....	72
bonds and warrants against special fund, § 1077.....	73
condemnation of site for, § 1077.....	72
election for, § 1077.....	71
health officers, duties in relation to, § 1077d.....	75

CITIES OF FIRST CLASS—Continued.

jurisdiction extended beyond city limits respecting, § 1077a.....	74
nuisances effecting water supply, abatement of, § 1077b.....	74
nuisances, abatement by action, § 1077e	75
penalty for pollution of water, § 1077b	74
provided for by ordinance, § 1077....	71
special fund for, § 1077.....	72
transfer of funds to special, § 1077.	73

Waterworks in Cities and Towns Other than First Class:

assessments for, § 1084.....	75
plans adopted before contract, § 1085	75
powers of cities in relation to, § 1086..	76

CITIES OF FIRST CLASS.

Additional Powers given, § 739a.....	45
appeal from council's decision, § 739a.	45
appeal to supreme court, § 739a.....	47
bond for appeal, § 739a.....	45
certificates of delinquency for, § 739a	49
charging with lien of, mode, § 739a..	45
collection by sale of property, § 739a	48
collection by suit, § 739a.....	48
council's decision conclusive, § 739a..	47
donations to, power to accept, § 739a.	51
hearing objections by council, § 739a	46
indebtedness, limitation of, § 739a....	52
indebtedness, validation of, § 739a....	51
installments of assessment coming due after sale of land, § 739a.....	50
license, power to grant, § 739a.....	53

Assessments:

liability for assessments, § 739a.....	52
made without bonds, § 739a.....	52
notice of appeal from council's decision, § 739a.....	46
objections to assessments, how made, limit of time to make, § 739a.....	45
payment of, time for, § 739a.....	47
provisions of act retroactive, § 739a..	50
sales for assessments, city as purchaser, § 739a....	49

Charter Amendments:

petition for, § 763a.....	55
provisions of act cumulative, § 763a...	55

Drainage and Sewerage:

assessment-roll and confirmation, prima facie evidence of validity, § 838..	59
bonds for assessments, § 838.....	60
certificates of delinquency may issue for assessments, § 838.....	60
city may purchase at sale for assessments, § 838.....	60
cost to property owner, mode of charging to property, § 838.....	58
deeds under sale for, effect of, § 838..	59
foreclosure of lien for assessments, § 838..	59
lien for assessments, foreclosure of, § 838	59
notice of assessment, sufficient demand of payment, § 838.....	59
payment of assessments, time of, § 838	59

CITIES AND TOWNS—Continued.

powers conferred, generally, § 838....	58
provisions cumulative, § 838.....	60

Eminent Domain:

assessments and payment of, § 793..	55
collection of, § 828.....	56
collection by suit, § 828.....	57
commissioners' report on, hearing evidence, § 802.....	56
liens for, § 828.....	56
subsequent installments, sale for, § 828	57
validity, how contested, § 828.....	56
warrants for, § 828.....	57
for water mains, § 828.....	57
enforcement of act, method for, § 828	57
provisions of act cumulative, § 828...	57

Local Improvements by Special Assessments:

compromise of and effect of, § 1117...	77
foreclosure of, parties to, § 1133.....	77
limit of extended to fifty per cent of increased value, § 1137.....	77
limit of assessment extended to fifty per cent of valuation for taxes, § 1138	77
powers conferred cumulative, § 1138..	78
valuation, how computed, § 1138.....	78

Municipal Courts:

clerk for police judge, § 750.....	54
conduct of causes in, § 753.....	54
costs in, § 752.....	54
justices, appointment of, § 754.....	55
justices' courts, § 745.....	53
police judge, how selected, § 746.....	53
jurisdiction of, § 747.....	53
city name as plaintiff in cases in police court, § 749.....	54
process in police court, § 748.....	54
pro tempore, § 755.....	55
salary of, § 751.....	54
Negligence, liability for, § 739a.....	52
Salaries of officers of, § 740.....	53

CITIES OF THIRD CLASS.**Council—Powers and Duties of:**

appointments, confirmation, § 935.....	62
assessments for improvements, § 943..	63
collection by suit, § 945.....	65
contracts, officers not to be interested in, § 968.....	66
elections of officers, § 927.....	61
franchises, ordinances granting, § 936.	63
ordinances, approval, passage, § 935..	62
public works, how contracted for, § 948	65
quorum for meetings, § 935.....	62
term of office, § 927.....	61
vacancies, § 929.....	62

CITIES OF FOURTH CLASS.

Bicycles—licenses for use of, § 1011b..	68
fees for license, § 1011b.....	68
license fund, appropriation of, § 1011c	69
paths for, § 1011b.....	68
regulation of use of, § 1011b.....	68

CITIES OF FOURTH CLASS—Continued.

Interpretation of act by court, § 1011.	69
Interpretation by court, § 1016.....	69
Officers of, § 996.....	67
terms of office, § 997.....	67
vacancies, how filled, § 999.....	67
when and how elected, § 997.....	67
official paper—selection of, § 1011d..	69
powers of cities of fourth class, § 1011a	68
public work must be done by contract, § 1019	70
purchase of waterworks outside city limits, ultra vires, § 1019.....	70

City Boards of Education—See EDUCATION.

CIVIL PROCEDURE IN COURTS OF RECORD.

Action, Forms of:	
action, only one form of, § 4793.....	542
Amendments of Pleadings:	
abuse of discretion in allowance of, § 4953	559
amendments after reversal on appeal, § 4953	561
amendments, harmless error disregarded, § 4957.....	561
supplemental pleadings, § 4958.....	561
vacation of judgments, § 4953.....	560
variance—when material, § 4949.....	558
variance—when immaterial, § 4950..	558
Commencing Actions:	
actions affecting title to lands, lis pendens, § 4887.....	553
appearance, jurisdiction by, § 4883..	553
appearance—subsequent proceedings, notice, § 4886	553
notices, how served, § 4889.....	554
summons, service of, § 4869.....	550
accompanied by copy of complaint, § 4873	550
constructive service, affidavit for, § 4877	551
constructive service on unknown heirs, § 4877a.....	551
how served on domestic corporations, § 4875	551
how served on foreign corporations, § 4875	550
how served on minors, § 4875.....	551
proof of service of, § 4882.....	552
service, constructive, opening on default, § 4880.....	552
service on joint debtors, § 4881....	552
service out of state, proof, § 4879..	552
who shall serve, § 4874.....	550
service of, motion to quash, § 4875..	551
General Rules of Pleading:	
actionable words, § 4940.....	557
bills of particulars, § 4930.....	557
joinder of causes of, § 4942.....	557
separate counts, § 4942.....	558
libel and slander—retraxit, § 4938a..	557
liberally construed, § 4931.....	556
redundancy, immateriality, § 4932....	556

CIVIL PROCEDURE IN COURTS OF RECORD—Continued.

Limitation of Actions:	
absence from state, suspension of statute by, § 4808.....	546
accounts, mutual open, § 4806.....	546
action, when begun, § 4807.....	546
actions arising in and barred by laws of another state, § 4818.....	547
actions in name of state, § 4807.....	546
begins to run when, § 4796.....	543
damages to realty, removal of lateral support, § 4805.....	546
defense of, a personal privilege, § 4796	544
defense of, when and how pleaded, § 4796	544
fraud, discovery of, § 4800.....	545
judgments, § 4798.....	545
misappropriation of public funds, § 4800	545
new promise in writing, § 4816.....	547
official bonds, breach of, § 4800.....	545
partial payments, § 4817.....	547
real action, § 4797.....	544
rent, installments of, § 4798.....	545
Parties to Actions:	
abatement of actions, § 4837.....	549
defendant, proper parties, § 4833....	549
defendant severably liable, § 4836....	549
guardian ad litem, § 4832.....	548
guardians for insane, § 4832a.....	548
husband and wife, § 4826.....	548
interpleaders, §§ 4843-4845.....	549
intervening, § 4846.....	549
necessary, § 4833.....	549
new, bringing in, § 4840.....	549
plaintiff, who may join, § 4833.....	549
real party in interest, § 4824.....	547
trustee of express trust, § 4825.....	548
wrongfully causing death of another, §§ 4828, 4829	548
Pleadings:	
answer—counterclaim, § 4913.....	555
denial of knowledge or information, § 4912.....	555
general denial—admissibility of evidence under, § 4912.....	555
inconsistent defenses, § 4912.....	555
what may contain—foreclosure of mortgage—legal defense, § 4913a..	555
complaints, amendments of, § 4910..	554
demurrer—insufficiency of facts, § 4907	554
misjoinder of parties, § 4911.....	555
objections must be specific, § 4911..	555
order respecting—failure to observe, § 4906	554
reply—departure, § 4917.....	556
waiver of objections to, § 4911.....	555
Venue of Actions:	
against corporations, § 4854.....	550
change—action begun in wrong county, 4856	550
change of, transmission of record, § 4860	550
local actions, § 4852.....	550
transitory actions, § 4855.....	550

Claims Against State—See ACTIONS AGAINST STATE.

Claim and Delivery—See PROVISIONAL REMEDIES.

Clerk of Superior Court—See SALARIES OF COUNTY OFFICERS; FEES AND COSTS.

Clerk Supreme Court—See SALARIES OF COUNTY OFFICERS; FEES AND COSTS.

Colville River—See FISHERIES (hatcheries).

Commencing Actions—See CIVIL PROCEDURE, etc.

Commercial Fertilizers—See POLICE AND SANITARY REGULATIONS.

Commissioner of Labor—See EMPLOYEES, PROTECTION TO.

Commissioner of Horticulture—See HORTICULTURE.

Competency of Witnesses—See EVIDENCE.

Community Property—See DOMESTIC RELATIONS (husband and wife); RIGHTS OF PROPERTY (deeds and other instruments; descents and distributions).

Complaint—See CIVIL PROCEDURE IN COURTS OF RECORDS (pleadings).

Condemnation—See EMINENT DOMAIN; PRIVATE CORPORATIONS (railway companies); CITIES AND TOWNS (waterworks); EDUCATION (sites for schoolhouses); HIGHWAYS (private ways of necessity for logging); HARBORS AND WHARVES (improvement of harbors).

Confirmation—See ENFORCEMENT OF JUDGMENT (sales on execution); STATE LAND (sale, confirmation of).

Constable—See SALARIES OF COUNTY OFFICERS, etc.

Contagious Diseases—See DOMESTIC ANIMALS (sheep; swine); POLICE AND SANITARY REGULATIONS (bakeshops; county boards of health).

Contempts—See SPECIAL PROCEEDINGS.

Contest of Will—See SPECIAL PROCEEDINGS (mandamus); PROBATE LAW AND PROCEDURE.

Continuance—See ISSUES, TRIAL AND JUDGMENT (trial of civil actions); CRIMINAL PROCEDURE.

Contractor—See EMPLOYEES; PROTECTION FOR; LABORERS ON PUBLIC WORKS.

Contractor's Bond—See LABORERS ON PUBLIC WORKS.

Contributions—See PROTECTION OF SURETIES.

Conveyance—See RIGHTS OF PROPERTY (deeds and other instruments; frauds and perjuries).

Convict—See CRIMINAL PROCEDURE (death warrant).

Coroner—See SALARIES OF COUNTY OFFICERS.

Corporations—See PRIVATE CORPORATIONS.

Costs—See APPEALS (bonds for costs; costs on appeal); EDUCATION (sites for schoolhouses); HIGHWAYS (laying out and opening); ISSUES, TRIAL AND JUDGMENT (costs and disbursements); LIENS AND ENFORCEMENT; PRIVATE DITCHES; SALARIES; FEES AND COSTS; SPECIAL PROCEEDINGS (mandamus).

Counterclaim—See CIVIL PROCEDURE (pleadings).

COUNTIES.

change of boundaries of, § 44..... 13

Chelan County:

actions and proceedings pending, § 35a 13
 boundaries of, § 35a..... 9
 classification of, § 35a..... 11
 commissioner districts, § 35a..... 12
 commissioners, first board of, § 35a.. 11
 county seat, location of, § 35a..... 11
 districts, § 35a..... 11
 fees for transcribing records, § 35a.... 13
 indebtedness, assumption of proportion of, § 35a.... 11
 officers of Kittitas and Okanogan, powers of, § 35a 12
 officers, provisional, appointment of, §35a 12
 organization of, method for, § 35a.... 9
 precincts, § 35a..... 1
 records affecting, to be transcribed, § 35a.... 12
 representative, legislative, § 35a..... 12
 superior court. provisions for, § 35a.. 12
 townships, § 35a..... 11
 transcribed records as evidence, § 35a 13

Ferry County:

actions pending in Stevens county affecting property in, § 35..... 8
 assumption of indebtedness by, § 35.. 6
 boundaries of, § 35..... 6
 certification of records transcribed, § 35 8
 classification of, § 35..... 6
 commissioners, appointment of, § 35.. 7
 commissioner districts, division of county into, § 35..... 7
 county seat, location of, § 35..... 6
 records of Stevens county affecting, to be transcribed, § 35..... 7
 representative district, § 35..... 7
 senatorial district, § 35..... 7
 superior court for, election of judge of, § 35 7
 transcribed records as evidence, § 35. 8

COUNTIES—Continued.

New, population necessary, § 35..... 8
provisional officers for, appointment of,
§ 35 8

County Auditor—See COUNTY GOVERNMENT; SALARIES OF COUNTY OFFICERS.

County Board of Equalization—See REVENUE AND TAXATION.

County Board of Health—See POLICE AND SANITARY REGULATIONS.

County Clerk—See COUNTY GOVERNMENT; SALARIES OF COUNTY OFFICERS.

County Commissioners—See COUNTY GOVERNMENT; COUNTIES; DRAINAGE DISTRICT; EDUCATION (division of territory); HIGHWAYS (control and management; ferries); HARBORS AND WHARVES (improvement of); POLICE AND SANITARY REGULATIONS (county boards of health); REVENUE AND TAXATION (collection of taxes; listing and valuation).

County Fruit Inspector—See HORTICULTURE.

COUNTY GOVERNMENT.

attorneys, county, power to sue for county, § 466..... 39
auditor, duties of, § 412..... 39
justices' salary, by whom audited, § 393 39
blank law repealed, § 365..... 38
commissioners, allowance of claims, § 359 38
auditing accounts, § 342..... 37
costs in misdemeanor cases, § 393.... 39
dedication of public lands for highways, § 342..... 37
dedication of public lands for streets, § 342 37
justice's salary, § 342..... 37
leasing property, § 315..... 35
leasing, applications for, § 315.... 35
leasing, execution of lease, § 315.. 36
notice of intention, § 315..... 36
objections to leasing, § 315..... 36
property subject to, § 315..... 36
terms and conditions, § 315..... 36
records of, as evidence, § 356..... 38
suits against county parties, § 342 38
coroner, powers of, § 529..... 40
burials by, § 537..... 40

County Seats:
removal of, § 284..... 35
canvassing vote in, § 284..... 35
failure to canvass, § 285..... 35
review of, by courts, § 284..... 35
sheriff, indemnity bond for, § 516.... 39
treasurer, bond, liability on, § 426.... 39
seal for, § 444 39

County Indebtedness—See FINANCE.

County Lines—See COUNTIES.

County Officers—See COUNTY GOVERNMENT; OFFICERS; SALARIES OF COUNTY OFFICERS.

County Seat—See COUNTIES (Chelan county; Ferry county); COUNTY GOVERNMENT.

County Superintendent of Schools—See EDUCATION (division of territory; officers; powers and duties; penalties; teachers).

County Surveyor—See SALARIES OF COUNTY OFFICERS.

County Treasurer—See COUNTY GOVERNMENT; REVENUE AND TAXATION (collection of taxes).

COURTS.

Attorneys at Law:
admitted by whom, § 4759..... 541
appearance, without authority, § 4767.. 542
applicant, duties of, § 4759..... 542
change of, in action pending, § 4769... 542
disqualification for admission, § 4763.. 542
liens on papers, etc., § 4772..... 542

Court Commissioners:
powers of, § 4729..... 535

Judicial Officers:
disqualified, when, § 4697..... 534
judges, jurisdiction of, § 4702..... 534
judges, powers of, additional, § 4702a.. 534

Jurors:
challenge, interest of commissioner not cause of, § 4740f..... 538
commissioners, absence of, pro tempore appointed, § 4740k..... 539
appointment of, § 4740..... 535
compensation, § 4740i..... 538
failure to perform duties, punishment, § 4740g..... 538
removal of, § 4740i..... 539
selection of jurors by, § 4740b..... 536
term of office, § 4740a..... 536
custody of jury-box, § 4740e..... 537
drawing and summoning jurors in counties of the first to seventh class, § 4740 535
exemption from jury service, § 4748... 541
judge may order panel when, § 4742... 541
juries in counties of eighth class and to twenty-ninth class, § 4741..... 540
juries drawn in vacation, when, § 4740m 539
open venires, when issued, § 4740j.... 538
operation of act postponed, § 4740n... 540
order for and drawing juries from box by commissioners, § 4740c..... 536
order for and drawing names of extra jurors from box by commissioners, § 4740d 537
qualifications of, § 4735..... 535
vacancies, how filled, § 4740h..... 538

Justices' Courts:
jurisdiction in criminal cases, § 4683.. 534
venue of action in, § 4687..... 534

Prosecuting Attorneys:
appointment by court, § 4755..... 541
deputies, § 4756..... 541

COURTS —Continued.

Superior Courts:
judges pro tempore, appointment, powers, § 4676..... 533
jurisdiction of, § 4663..... 533

Supreme Court:
jurisdiction in prohibition, § 4650..... 533
jurisdiction, limitation on by amount in controversy, § 4650..... 532

Court Commissioners—See COURTS.

Courts-martial See MILITIA.

CRIMES AND PUNISHMENTS.

Administration of Law and Justice:
tampering with witness, § 7222....,.... 690

Forgery and Counterfeiting:
forgery by indorsement of county warrant, § 7128..... 685
forgery of drafts, § 7128..... 686
forgery—other instruments in writing, § 7128 685

Fraud and Deceit:
false representation by corporation officer, § 7172a..... 689
obtaining food, etc, § 7178..... 690
punishment, § 7178..... 690
prima facie proof, § 7178..... 690
sale of seeds, § 7173a..... 689

Malicious Mischief:
malicious mischief—advertising boards and posts, § 7164c..... 689
booms, § 7164b..... 688
electric property, § 7164a..... 687
electric property, punishment, § 7164a 688
fire, wantonly putting out, § 7164a.. 688
improvements on public lands, § 7164 687
irrigation ditches, § 7163..... 687
mile-boards and posts, § 7164c..... 688
obliterating marks and brands, § 7155a 686
personal property, § 7144b..... 686
mortgaged property, removal of, § 7162 686
punishment, § 7164..... 687
records and instrument of state and federal governments, § 7164..... 687
trees and shrubs, § 7144a..... 686

Offenses Against the Person:
assault and battery—information, § 7054 681
assault—judgment, § 7055..... 681
with deadly weapon—information, § 7058 681
with intent to rape—evidence, § 7057 681
with intent to rape—information, § 7057 681
kidnaping—consent, § 7050..... 681
kidnaping defined, § 7049..... 680
murder in second degree, § 7038..... 680
instructions, § 7035..... 680
rape—consent of female under eighteen, § 7062 681
evidence—sufficiency of, § 7062..... 681
information, § 7062..... 681
seduction—information, § 7056..... 682

Offenses Against the Peace:
anarchy, criminal—definition of, § 7074a 682

CRIMES AND PUNISHMENTS—Continued.

blacklisting, § 7090..... 683
publication—defense permitted, § 7074a 683
unlawful assembly—voluntary attendance—punishment, § 7074a..... 683

Offenses Against Property:

arson—constitutionality of act of, § 7094 683
burglary—accomplice, § 7104..... 684
description of premises, § 7104..... 684
evidence in, § 7104..... 684
information in, § 7104..... 684
embezzlement by agent having commission, § 7119..... 684
information, § 7119..... 684
public funds, § 7123..... 685
grand larceny—information, § 7108... 684
larceny from person—penalty, § 7108a. 684
larceny of fixtures defined, § 7119a.... 685
robbery—defined, § 7103..... 684

Offenses not Specially Provided for:

attempts to commit crime—sodomy, § 7437 710
duty of prosecuting attorney, § 7442... 711
former conviction—information charging, § 7442..... 712
trial of issue of, § 7442..... 711
sentence, § 7442 711
protection of American flag, § 7441.... 711
repeals of criminal statutes—saving clause, § 7443..... 712
second and third convictions of felony—penalty, § 7442..... 711

Public Health, Safety and Convenience:

child labor—child under fourteen years, § 7287a 693
female under eighteen years, § 7287a 693
punishment, § 7287a..... 693
obstruction of highway—evidence, § 7293 694
quarantine—violation of—punishment, § 7287b 693

Public Morals and Decency:

barbering on Sunday, § 7251a..... 692
conniving at wife prostitution, § 7238a. 691
employment of females in saloon, § 7258 692
gambling resorts, maintenance of, § 7270 692
incest, with or without consent, § 7229. 691
lottery tickets, sale of, § 7259..... 692
nickel-in-the-slot machines, § 7271..... 692
nickel-in-the-slot machines—fines for maintenance, appropriation of, § 7271 693
procuring and subsisting by prostitution, § 7238a..... 691
Sunday law—due process of law—police power, § 7251..... 691

Public Trade, Policy and Police Economy:

barratry defined—penalty for, § 7323.. 694
cruelty to animals—amusement by bird fighting, § 7411..... 707
appropriation of fines, § 7411..... 709
causing them to fight, § 7411..... 707
complaint and warrant, § 7411..... 708
construed, how act to be, § 7411..... 710
definitions of terms, § 7411..... 709

CRIMES AND PUNISHMENTS—Continued.

deprivation of food, § 7411.....	708
docking, § 7411.....	707
duties of officers respecting, § 7411..	707
humane society—privileges of, § 7411	706
inhuman treatment by carriers, § 7411	707
inhuman treatment by users of, § 7411	707
neglect of aged, § 7411.....	708
penalties, § 7411.....	708
power to arrest, § 7411.....	708
powers of, members as constable, etc., § 7411.....	706
punishment, § 7411.....	709
who may prosecute for, § 7411.....	709
game birds—closed season for, § 7351..	695
limit to number permitted to be killed, § 7351a.....	696
punishment for killing out of season, § 7351a.....	696
game fish—closed season, § 7399a.....	705
penalty for taking to sell of cure. § 7399c.....	706
penalty for transporting, etc., § 7399c	706
taking limited to hook and line, § 7399a	705
taking for sale or curing, § 7399c...	705
transporting, or having in possession for purpose of transporting, § 7399c	706
sturgeon—closed season, § 7397.....	704
sturgeon—limitation as to age, etc., § 7398.....	704
sturgeon—use of Chinese line, § 7398a	705
game law—appropriation of fines under, § 7371.....	704
appropriation of license and fine, § 7366a	701
buying of game prohibited, § 7357...	696
closed season for birds, § 7352.....	696
closed season for deer, § 7346.....	695
closed season for deer and caribou, § 7371	701
closed season for game birds, § 7371.	702
closed season for imported pheasant, etc., § 7371.....	703
moose, elk, caribou, antelope, mountain sheep or goat, § 7345.....	694
closed season for quail, § 7371.....	703
closed season for swan, geese, brandt crane, snipe duck, § 7371.....	702
number permitted killed in one day, § 7371.....	702
number of deer and caribou to be killed by one person, § 7371.....	701
number of deer permitted to be killed, § 7348.....	695
export of game prohibited, § 7358..	697
game birds not to be killed at all, § 7359.....	697
having in possession, or offering for sale any game, misdemeanor, § 7371	703
hunter's license, § 7366a.....	700
killing game for sale prohibited, § 7371	703
limiting number of moose, elk, caribou, antelope, mountain sheep or goat, § 7371.....	701

CRIMES AND PUNISHMENTS—Continued.

number of swan, geese, etc., permitted to be killed in one day, § 7371.	702
penalty for excessive killing of game, § 7371.....	701
penalty for hunting without license, § 7366a	701
penalty for violations of, § 7371....	704
possession of game, presumption of, § 7371	703
prohibition against killing females of moose, elk, caribou, antelope, etc., § 7345	694
prohibition against killing female elk, etc., § 7371.....	701
sale of game prohibited, § 7356.....	696
use of dogs prohibited, § 7347.....	695
game warden—appointment, § 7363...	699
creation of, § 7363a.....	699
duties, § 7364	700
expenses, payment of, § 7363a.....	699
may make arrests, § 7366.....	700
powers and duties, § 7363a.....	699
reports of, § 7363a.....	699
protection of trout in Chelan county, § 7399b	705
protection of song birds and nests, § 7362a	697
song birds—birds excepted from provisions of act—counties, § 7362a....	699
eggs of birds other than game, § 7362a.	698
persons exempt from provisions of act protecting, § 7362a.....	698
punishment for killing, etc., § 7362a.	698
scientists' certificates, § 7362a.....	698
Suffrage:	
bribing voter, § 7420.....	710
corruptly influencing voter, § 7421.....	710
intimidation of voter, § 7420.....	710

CRIMINAL PROCEDURE IN COURTS OF RECORD.

act not retroactive, § 6993a.....	679
assault with intent to rob, § 6850.....	673
bail—rights of cosureties, § 6866.....	674
change of venue in criminal causes, § 6794	671
commencement of sentence in felonies, § 6999	679
confessions as evidence, § 6942.....	676
continuance in criminal causes, § 6929.	675
death warrant—custody of condemned, § 6993a	679
execution of, § 6993a.....	678
filing on return of, § 6995.....	679
order to accompany, § 6993a.....	678
record by superintendent of prison, § 6993a	678
record in clerk's office, § 6993a.....	679
return of order accompanying, § 6993a	679
return of warrant, § 6993a.....	678
when issued—contents, § 6993a.....	678
dismissal a bar in misdemeanor, not in felony cases, § 6916.....	674
evidence—variance, § 6943.....	676
failure to plead over after demurrer overruled, § 6898.....	674
information—assault, § 6850.....	674

CRIMINAL PROCEDURE IN COURTS OF RECORD—Continued.

assault with deadly weapon, § 6850..	673
circulating indecent pictures, § 6850.	673
duplicity in, § 6844.....	672
horse stealing, § 6850.....	673
embezzlement, § 6850.....	673
incest, § 6850.....	673
indorsement of names of witnesses, § 6832.....	672
larceny, § 6850.....	673
larceny and embezzlement of se- curities or money; description of money, § 6859.....	674
perjury, § 6850.....	673
rape, § 6850.....	673
requisites of—murder, § 6850.....	672
robbery, § 6850.....	673
selling liquor to minors, § 6850.....	673
sodomy, § 6850.....	673
verification of, § 6833	672
without examination, § 6802.....	671
judgment—costs against defendant, § 6975	677
jury—custody of, not to separate, § 6947	676
jury—sealed verdict, § 6947.....	676
jury—separation after agreement, § 6960	677
limitations of time for commencing, § 6780	671
new trial—insufficiency of evidence, § 6965	677
misconduct of jury, § 6965.....	677
newly discovered evidence, § 6965...	677
surprise, § 6965.....	677
oath of jury, § 6936.....	675
principal and accessory, § 6782.....	671
rendition of verdict, § 6960.....	677
term of sentence begins when, § 6999.	679
trial—challenge to panel of jury, § 6933	675
jury—number of jurymen, § 6930....	675
right of accused to face witnesses, § 6925	675
separate, for persons jointly charged, § 6949	676
view of premises—refusal to order, § 6948	676
verdict, form of, § 6961.....	677
verdict—may be of any offense neces- sarily included in charge, § 6956....	676
verdict—may be for any degree of of- fense charged, § 6955.....	676
venue in criminal cases, § 6788.....	671
variance as to time alleged, § 6842....	672
variance in criminal causes, § 6842....	672
witnesses—defendant competent, but cannot be compelled to criminate himself, § 6940.....	676
words and phrases—construction of, § 6848	672

Cruelty to Animals.—See **CRIMES AND PUNISHMENTS: PUBLIC TRADE; POLICY AND POLICE ECONOMY.**

Dairy Commissioner.—See **POLICE AND SANITARY REGULATIONS** (dairy products).

Dairy Products.—See **POLICE AND SANITARY REGULATIONS.**

Dakota Creek Hatchery.—See **FISHERIES** (hatcheries).

Damages.—See **ACTIONS BY AND AGAINST PUBLIC CORPORATIONS; APPEALS TO SUPREME COURT; CITIES AND TOWNS** (plats, additions and streets); **DIKING DISTRICTS; DRAINAGE DISTRICTS; EDUCATION** (sites for school-houses by condemnation); **EMINENT DOMAIN; FIRES, PERMITTING TO SPREAD; HIGHWAYS** (laying out and opening, private ways of necessity); **POSSESSORY ACTIONS AND QUIETING TITLE** (forcible entry and detainer; ejectment); **PRIVATE DITCHES; WASTE, TRESPASS AND NUISANCE; WATER RIGHTS.**

Days of Grace.—See **BILLS OF EXCHANGE AND PROMISSORY NOTES.**

Death Penalty.—See **CRIMINAL PROCEDURE.**

Deed.—See **RIGHTS OF PROPERTY.**

Deer.—See **CRIMES AND PUNISHMENTS** (public trade, policy and police economy; game law).

Defendant.—See **CIVIL PROCEDURE** (parties).

Deficiency.—See **ENFORCEMENT OF JUDGMENTS** (sales of property on execution).

Deficiencies in Public Institutions.—See **FINANCE.**

Demurrer.—See **CIVIL PROCEDURE** (pleading).

Dental Examiners.—See **POLICE AND SANITARY REGULATIONS** (dentistry, practice of).

Deposit.—See **BILLS OF EXCHANGE AND PROMISSORY NOTE** (payable at bank, etc.); **PROVISIONAL REMEDIES.**

Deputies.—See **POLICE AND SANITARY REGULATIONS** (insurance companies; insurance commissioner; state fire marshal).

Depositions.—See **EVIDENCE**

Descents and Distribution of Estates.—See **RIGHTS OF PROPERTY.**

DIKING DISTRICTS.

appeal from assessment of omitted lands, § 3685.....	441
assessment of omitted lands, § 3685...	441
canvass of votes cast at election to es- tablish district, § 3677.....	440
commissioners of district, bond of, § 3677	441
election of, § 3677.....	440
oath of, § 3677.....	441
term of office of, § 3677.....	441
election to establish district, § 3677..	440
record of result of, § 3677.....	440

DIKING DISTRICTS—Continued.

- petition for assessment of omitted lands, § 3685..... 441
- trial and judgment on petition to assess omitted lands, § 3685..... 441

Distress—See REVENUE AND TAXATION (collection of taxes).

Distribution of Estates—See PROBATE LAW AND PROCEDURE.

Districts—See COUNTIES (Chelan county; Ferry county); EDUCATION.

District Clerk—See EDUCATION.

District Directors—See EDUCATION.

District Meetings—See EDUCATION.

District Schools—See EDUCATION.

Ditch—See DRAINAGE DISTRICTS.

Division of School Territory—See EDUCATION.

Divorce—See DIVORCE AND ALIMONY.

DIVORCE AND ALIMONY.

- alimony, payment of permanent, cannot be enforced by attachment, § 5723..... 612
- alimony, permanent, authorized by code, § 5723..... 611
- alimony, suit for subsequent to divorce, § 5723..... 612
- alimony without divorce, § 5716..... 611
- appeal, right of state as to, § 5729.. 612
- change of venue in, § 5718..... 611
- children, decree awarding custody modified after time for appeal expired, § 5723..... 612
- children, custody of, § 5722..... 611
- children, jurisdiction to adjudge custody, § 5723..... 612
- divorce, grounds for, § 5716..... 611
- laches in suing for, § 5716..... 611
- real property, status of may be adjudged in suit for separate maintenance, § 5723..... 612
- remarriage, prohibition against, § 5726 612
- residence of parties, jurisdictional, § 5718..... 611
- suit, money in, § 5722..... 611
- suit money, payment of, how enforced, § 5723..... 611

DOMESTIC ANIMALS.

Sheep:

- annual inspection of sheen, § 3413.... 395
- bridges and ferries. duty of, as to crossing sheep, § 3415c..... 397
- certificate of health, good for one year only, § 3415d..... 397
- county inspector. appointment, § 3402a 391
- election of, § 3403..... 391
- powers and duties of, § 3405..... 392
- oath and bond, § 3404..... 392
- damages for negligent driving of diseased sheep—lien for, § 3415g... 398
- definition of terms used in act, § 3415n 400

DOMESTIC ANIMALS—Continued.

- driving on highways and public ranges without certificate of health, § 3415f 398
- infected sheep—duty of owner, § 3412 395
- infected sheep—introduction of, § 3411 395
- inspection of sheep on request, § 3410 394
- inspector's authority to inspect, § 3415 396
- compensation of, § 3415e..... 397
- fraudulent conduct—penalty, § 3415i 399
- lien for damages, foreclosure, receiver and attorneys' fees, § 3415h..... 398
- moving sheep—conditions for, proof of, § 3409..... 394
- owners and custodians to report infection, § 3415m..... 399
- penalties for refusing assistance and breach of quarantine, § 3415a..... 396
- quarantine district, regulations of, § 3407..... 393
- quarantine limits—change of, § 3415b 397
- disinfection by owner, § 3414..... 396
- location of—place, § 3415l..... 399
- quarantine of sheep—duty of owner, § 3406..... 392
- repeal of sections, § 3415p..... 400
- sheep brought from other county without certificate—disposition of, § 3415k..... 399
- sheep from other state or territory, inspected, etc., § 3408..... 394
- sheep, protection of—penalties, § 3415o 400
- Swine:
- care of, § 3418..... 401
- exceptions from operation of act, § 3494a..... 401
- importation—duties of transportation and yarding companies—penalties, § 3494a..... 402
- preventing spread of disease among, importation of, § 3494a..... 401

DOMESTIC RELATIONS.

Husband and Wife—Property Rights:

- community debts, § 4490..... 522
- community personalty, subject payment of debts of spouse, § 4490.... 522
- community property, § 4490..... 521
- conveyance of, § 4491..... 523
- parties to suits, affecting, § 4490.... 522
- rights of second wife in husband's interest in, § 4490..... 522
- married women, actions by, § 4503.... 523
- property rights of married women, § 4502..... 523
- separate estate of husband—increase, § 4488..... 520
- separate, of wife—judgment, § 4489.. 520
- separate estate of wife—judgment against husband, § 4489..... 521
- separate property of wife, homestead acquired under act of Congress, § 4489..... 521

Druggist—See POLICE AND SANITARY REGULATIONS (pharmacy).

DRAINAGE DISTRICTS.

- assessments of omitted lands, § 3727.. 442
- appeals from, § 3727..... 442
- interpretation of act of 1895, § 3755.. 453

DRAINAGE DISTRICTS—Continued.

natural watercourses, improvement of, § 3753.....	443
organization of districts, § 3754a.....	443
application for, to whom, § 3754a..	444
adverse report on application, § 3754a	444
construction of ditch, 3754a.....	446
cost of district, apportionment, § 3754a.....	447
assessment of, § 3754a.....	447
assessment of state lands for, § 3754a	448
to railways and highways, § 3754a	444
county's portion, how paid, § 3754a	449
statement of § 3754a.....	447
county attorney, duty of, § 3754a...	449
damages, action to determine, § 3754a	446
damages and benefits, schedule of § 3754a	445
damages determined, proceedings after, § 3754a.....	446
damages, how and when paid, § 3754a	447
ditch defined—petition for, § 3754a.	443
ditches in more than one county, § 3754a	450
maintenance of ditch, § 3754a.....	449
natural watercourses, § 3754a.....	449
penalties for nonfeasance, § 3754a..	448
penalty for obstructing ditch, § 3754a	449
petition and bond to be filed, § 3754a	444
plat, scale and form, § 3754a.....	445
private ways of necessity, § 3754a..	449
records to be kept, § 3754a.....	448
report of benefits and damages, hearing of, § 3754a.....	445
report of damages, etc., date of hearing, notice of, § 3754a.....	445
report favorable, resurvey, § 3754a	444
supervisor compensation of, § 3754a	446
survey for ditch, § 3754a	444
taxes for maintenance, § 3755a....	449
vacation of ditch, § 3754a	448
validation of proceedings under prior act, § 3754a.....	448
validity of act adjudged by supreme court, § 3754a.....	450
public funds, misapplication of, § 3762	454
payment of warrants issued under act of 1890, § 3747a	442
order of payment, § 3747a	443
payment of warrants issued under act of 1895, § 3762a	457
appeal for judgment of superior court, fixing levy for § 3762a....	457
assessment for by county board, § 3762a	454
certification of order of court to levy, § 3762a.....	456
judgment of court of amount of levy, § 3762a.....	456
judgment of dismissal, § 3762a....	457
notice of hearing petition, § 3762a..	456

DRAINAGE DISTRICTS—Continued.

notice of hearing, time for, § 3762a.	455
petition for order to access, § 3762a	455
petition, hearing, time fixed by court, § 3762a	455
registration of warrants, § 3762a...	454
validating acts of commissioners done under prior act, § 3762....	454
private ditches, establishment of, § 3754b	450
appeal not allowed until final judgment, 3754b	453
bond for costs and expenses, § 3754b	451
owners of land may procure, § 3754b	450
petition for, 3754b.....	450
summons and service of, § 3754b...	451
viewers and survey, § 3754b.....	451
viewers, compensation of, § 3754b..	453
viewers' report, § 3754b.....	451
viewers' report, exceptions to, § 3754b	452
viewers' report rejected—other viewers, § 3754b	453
warrants for construction, order of payment, § 3761	453

Dungeness River Hatchery—See FISHERIES (hatcheries).

EDUCATION.

agricultural college, appropriation for, § 2535	268
regents, powers of, § 2534	266
scientific school and chemistry building, appropriation for, § 2535....	266
funds of, kept separate, § 2535....	268
sale of lands of, § 2535.....	266
selection of land for, § 2535.....	266

Bonds of School Districts:

school district bonds—election—notice of—sufficiency, § 2388.....	249
bonds, sale of—notice of sale, § 2389	249
levy for interest and redemption, § 2391	250
may borrow money, § 2387.....	249
may issue bonds, § 2387.....	249
payment of interest, § 2392.....	250
refunding bonds, § 2394.....	250

City Boards of Education:

boards of education in cities of ten thousand and over, § 2346.....	238
school districts—annual elections—notice of—polls, § 2347.....	238
school districts—elections—registration, § 2348.....	239
school districts—levy of tax for—purposes of levy, § 2367.....	239
taxes for schools in cities of ten thousand or more—limit of levy, § 2367.	240

County Institutes:

credit for attendance of, § 2372.....	241
length of sessions, § 2371.....	240
when held—work of—joint institutes, § 2369.....	240
district clerk—election—term—vacancy, § 2319.....	229
powers and duties, § 2320.....	229

EDUCATION—Continued.

District Directors:	
contracts, directors not to be interested in, § 2316.....	229
election—term, § 2310.....	227
limit of indebtedness, § 2317.....	229
nonresident pupil—admission of tuition, § 2313.....	228
powers and duties of, § 2311.....	227
teachers, employment of, § 2311.....	228
District Meetings:	
special districts meetings—called when—purpose of, § 2442.....	254
District Schools:	
attendance compulsory, § 2341.....	232
attendance at school—duties of parents and guardians, § 2341a.....	233
attendance in cities of ten thousand or more—duties of custodians of children, § 2341b.....	235
clerk's neglect to report—penalty, § 2341a.....	234
costs in enforcement of act, § 2341b..	238
employing children under sixteen years of age—penalty, § 2341b.....	237
employment of children under fifteen, § 2341b.....	236
finer under act of 1899—appropriation of, § 2341b.....	237
guardians—penalty for neglect, § 2341a.....	233
habitual truants—rules governing—duty of school board, § 2341b.....	237
minimum term for year, § 2340.....	232
notice to parents and guardians on, nonattendance—penalty for further neglect, § 2341a.....	234
penalty for neglect of custodians, § 2341b.....	235
private schools in cities—approval of by school board, § 2341b.....	235
reports of clerks, § 2341a.....	234
reports to truant officers, § 2341b....	236
school month defined, § 2336.....	232
school year defined, § 2336.....	232
teacher's neglect—penalty, § 2341a....	235
teachers' reports, § 2341a.....	233
truants—jurisdiction of superior courts in relation to, § 2341b.....	238
truant officers—appointment—duties, § 2341b.....	236
truant officer—duties, § 2341b.....	237
Division of Territory:	
changing district boundaries—notice of hearing, § 2276.....	211
changing district boundaries petition for, § 2276.....	211
change of district boundary—existing indebtedness, § 2276.....	211
change, without petition, § 2276.....	211
changing boundaries of district—appeal from decision of superintendent, § 2276.....	211
consolidated school districts, how organized, § 2283.....	217
consolidated school districts—organization of board of directors, § 2286..	218

EDUCATION—Continued.

consolidated school districts—property of, § 2284.....		218
joint school districts—how formed, § 2288.....		218
joint school district—reports of, § 2289.....		219
new school district—appeal from commissioners' decision, § 2275.....		210
new school district—adjustment of debts, § 2275.....		210
new school district—division of improvements, § 2275.....		210
new school district—hearing by commissioners on appeal, § 2275.....		210
new school districts—how organized, § 2275.....		209
new school district—notice of hearing petition, § 2275.....		209
new school districts—petition for, § 2275.....		209
school districts—area of, § 2277.....		212
Elections:		
elections of districts—voters' qualifications—registration—challenge, § 2423.....		254
elections of districts—when and where held, § 2419.....		253
school warrants—validation of, § 2435.		254
Free Libraries:		
abolished, how, § 2618.....		275
advice of state commission, § 2618...		274
board of trustees, organization and duties of, § 2618.....		271
establishment of, § 2618.....		270
exchange and loan of books, § 2618....		273
funds for support of, § 2618.....		274
gifts to, § 2618.....		275
loan of books, § 2618.....		274
management and control of, § 2618...		271
money may be granted, § 2618.....		270
penalties for detention of books in violation of rules, § 2618.....		273
penalties for injuring property, § 2618.		273
reports of trustees, § 2618.....		272
suspension and forfeiture of privileges, § 2618.....		273
taxes to support, § 2618.....		271
transfer of property and rights, § 2618		273
use by nonresidents, § 2618.....		272
use of, by whom, § 2618.....		272
General Provisions:		
compulsory attendance at schools maintained by United States, § 2469....		261
compulsory attendance—demand of attendance before proceedings begun, § 2469.....		261
compulsory attendance—enforcement of, § 2463.....		259
compulsory attendance—failure after demand, penalties for, § 2469.....		262
examination of pupils, § 2468.....		260
fines under act, appropriation of, § 2469.....		262
Graded and High Schools:		
graded and high schools—limits of districts, § 2342.....		238

EDUCATION—Continued.

Normal Schools:	
courses of study, diplomas, § 2553.....	268
free text-books—deposit fee—library fund, § 2554.....	269
Officers—Powers—Duties:	
county superintendent — election — term—vacancy, § 2301.....	224
officers furnished by county, § 2308.....	226
powers and duties of, § 2304.....	224
salary and mileage, § 2309.....	226
temporary certificates to teach, § 2304.....	226
state board of education—appointment, § 2295.....	222
meetings, § 2296.....	223
powers and duties of, § 2298.....	223
state school funds—certification of— affect as between state and district, § 2293.....	222
state superintendent—powers and duties of, § 2293.....	220
state superintendent may employ stenographer, § 2294.....	222
Penalties:	
county superintendent to provide for teaching hygiene, § 2449.....	256
director's failure to provide for teaching hygiene, § 2448.....	255
district clerk to make failure of reports, § 2450.....	256
failure to surrender records to successor, § 2451.....	256
defacing and injuring school property, § 2456.....	258
dissection and vivisection in schools, § 2457.....	258
disturbing school session, § 2454.....	257
failure to account for fines, § 2447.....	255
forfeiture of school fund, § 2459.....	258
insulting teacher, § 2453.....	257
neglect of county superintendent, § 2446.....	255
neglect of teacher to enforce course of study, § 2452.....	256
nonattendance, § 2457.....	259
teacher's failure to attend institute, § 2452.....	257
false reports as to attendance, § 2455.....	257
maltreatment of pupil, § 2452.....	267
text-books, unauthorized use of, § 2458.....	258
violations of code of instruction disclosing question in examination, § 2445.....	255
School for Defective Youth:	
additional ground for, § 2591.....	270
annual meetings, § 2570.....	269
indigent pupils—expense of, § 2589.....	270
term of, § 2580.....	270
who admitted, § 2563.....	269
School Revenues:	
annual tax—levy—limit, § 2381.....	245
holders of warrants, duty of, § 2386a.....	247
levy of tax by districts may be increased by vote, § 2382.....	246

EDUCATION—Continued.

new school districts—division of funds, § 2386.....	246
permanent fund—investment—attestation signing, and printing bonds, § 2386b.....	248
permanent fund—investment—duty of state treasurer—redemption, § 2386b.....	248
permanent fund—investment in state bonds, § 2386b.....	248
permanent fund—investment in bonds attestation of bonds, § 2386b.....	248
permanent fund—investment in state bonds—denomination—interest payment, § 2386b.....	248
permanent fund—investment in warrants, § 2386a.....	247
special tax levy—union districts, § 2382.....	246
state treasurer, duty of, § 2386a.....	247
Sites:	
acquired by right of eminent domain, § 2278a.....	212
condemnation of schoolhouse site—decree of, § 2278a.....	214
condemnation for schoolhouse site—adjournment of hearing, § 2278a.....	213
condemnation for schoolhouse site—appeal from award of damages, § 2278a.....	214
condemnation for schoolhouse site—costs of proceedings in, § 2278a.....	214
condemnation for schoolhouse site—effect of appeal from award, § 2278a.....	214
condemnation for schoolhouse site—findings and order, § 2278a.....	213
condemnation of schoolhouse site—jury — number — how selected, § 2278a.....	213
condemnation of schoolhouse site—notice to owner, § 2278a.....	212
condemnation of schoolhouse site—petition for, § 2278a.....	212
condemnation for schoolhouse site—parties to proceedings, § 2278a.....	214
condemnation of schoolhouse site—proceedings in, § 2278a.....	213
union or graded schools—course of study in, § 2282.....	217
union or graded districts—powers of board, § 2281.....	216
union or graded schools—organization, § 2280.....	215
State Library Commission:	
creation of—membership, § 2600.....	275
duties of commission—additional, § 2604.....	277
librarian—duties, § 2603.....	276
place of office—secretary, § 2605.....	277
powers and duties of, § 2601.....	275
public documents—distribution, § 2609.....	278
duties of printing board to, § 2606.....	277
includes, what, § 2607.....	278
records of, to be kept, § 2608.....	278
repealing clause, § 2610.....	280
salary of state librarian, § 2602.....	276

EDUCATION—Continued.

State University:
 experiment station at Puyallup—supervision of, § 2519..... 265
 lands—selection and control, § 2485a. 265

Museum:
 boards and commissions, duties of with respect to, § 2490..... 265
 depository for objects and documents of historical value etc.—rules for, to be established by regents, § 2490.. 266

Teachers:
 contracts—violation of, § 2326a..... 231
 course of study by county superintendent, § 2325..... 231
 employment—powers of board, § 2326. 231
 not required to work on legal holidays, § 2327..... 232
 reports, § 2323..... 231

Teachers' Certificates:
 certificates of teachers—requirements, § 2411..... 252
 county examination of teachers, § 2410 252
 diplomas validating, § 2406..... 251
 examination of teachers, fees for, § 2412..... 253
 first-grade certificates—renewal of, § 2414..... 253
 state certificates—life diplomas—to whom granted—requirements, § 2408..... 251
 state certificates without examination to graduates, etc., § 2409..... 251
 teachers' certificates—revocation, § 2418..... 253

Text-books:
 classification of districts for adoption of system, § 2375..... 241
 circulating libraries—establishment, § 2376a..... 245
 commission, § 2375..... 241
 commission—duties of, § 2375..... 242
 county board of education, created, § 2375..... 243
 county board of education—duties of, § 2375..... 243
 free—shall be furnished by board when, § 2378..... 245
 joint districts—control of, § 2375..... 244
 principals of schools—course of study, § 2375..... 242
 repeal of original section, § 2375.... 244
 special election for free text-books, § 2377..... 245
 text-book commission—compensation, § 2375..... 243
 text-books—contracts for—impairment of, § 2375..... 244

Truant School:
 cities of fifty thousand, § 2469a..... 262
 incorrigibles, § 2469a..... 262
 parol of pupils of truant schools, § 2469a..... 264
 parol of pupils of truant schools—reports concerning, § 2469a..... 264
 purchase and renting buildings and grounds for, § 2469a..... 262

EDUCATION—Continued.

religious instruction inhibited, § 2469a. 263
 rules for government, § 2469a..... 264
 superintendents and officers, § 2469a. 263
 truants—duties of parents and guardians of, committed to school, § 2469a. 263
 examination of—petitions, § 2469a.. 263
 hearing of petition to commit to school, § 2469a..... 263
 violations of—penalties for, § 2469a. 264

Ejectment—See POSSESSORY ACTIONS, etc.

ELECTIONS—See EDUCATION (text-books); HIGHWAYS (funds and labor for); MILITIA.

ballots for, duty of candidate with respect to, § 1366..... 93
 how prepared and printed, § 1364.. 92
 how prepared by voter, § 1370..... 93
 not to be marked, § 1388..... 95
 not void, § 1376..... 95
 preparation by voter, § 1362.... 92
 secrecy of, § 1380..... 95
 when not rejected, § 1403..... 96
 challenge of voter, duties of officers, § 1391..... 95
 manner and form, § 1393..... 96
 electors, disabled and illiterate, § 1373..... 93
 who are, § 1320..... 91
 nomination by certificate of electors, § 1352..... 91
 certification of, § 1349..... 91

Poll-books:
 how arranged, § 1455..... 98
 kept where, § 1451..... 96
 notice of closing, § 1454..... 97
 open when, § 1454..... 97
 registration of voters, § 1445..... 96
 affidavit of applicant, § 1456..... 98
 application for, § 1456..... 98
 method of registration, § 1455..... 98
 notice of, § 1453..... 97
 requirements from voter, § 1455.... 98
 returns, transmission of, § 1406..... 96

Electors—See ELECTIONS.

Electric Light Companies—See EMINENT DOMAIN.

Embezzlement—See CRIMES AND PUNISHMENTS (offenses against property).

EMINENT DOMAIN.

appeal in condemnation cases, § 5645 604
 appeal, questions involved in, § 5645 604
 award, mortgagee's right in, § 5644.. 603
 damages, additional—element of, § 5622..... 602
 damages, prior improvements by appropriator, § 5641..... 603
 electric companies may lease or purchase plants, § 5651..... 606
 electric railways may lease or purchase plants, § 5652..... 608
 irrigation, a public use per se, § 5640. 603
 judgment, nature of, § 5642..... 603

EMINENT DOMAIN.—Continued.

market value, competency of witness, § 5641.....	603
market value, evidence, cross-examination, § 5641.....	603
market value, evidence of, § 5641.....	603
market value, proof of as to separate parcels, § 5641.....	603
measure of damages, § 5641.....	603
right of eminent domain applicable to right of way already occupied, § 5647.....	604
right of, over highways, § 5651.....	605
right of, to electric companies over private property, § 5651.....	606
right of, to electric power companies, § 5651.....	605
right of, to electric railways, § 5652.....	607
right of, to electric railways over highways, § 5652.....	607
right of, to electric railways over private property, § 5652.....	607

Employees—See **LIENS AND ENFORCEMENT OF LIENS** (laborers on logs and timber; mechanics and materialmen).

EMPLOYEES, PROTECTION FOR.**Commissioner of Labor:**

appropriation to aid administration of act, § 3322g.....	368
arbitration of disagreements, § 3322g.....	367
compensation of arbitrators, § 3322g.....	367
failure of—statement of parties—publication, § 3322g.....	367
notice to be served by sheriff, § 3322g.....	367
proceedings in—before whom had, § 3322g.....	367
bureau, powers of, § 3300.....	362
reports to be printed, § 3302.....	363
records are public documents, how to be preserved, § 3301.....	362
cancellation clause, all contracts for state work must contain, § 3322f..	366
cancellation of state contracts duties of officers as to, § 3322f.....	367
commissioner of labor, appointment, § 3296.....	361
powers of, § 3299.....	362
salary of, § 3304.....	363
consolidation of powers and duties of other bureaus and officers, § 3304a.	363
contractors' liability for violation of provisions as to hours of day, § 3322b.....	364
dangerous machinery, protection from, § 3322e.....	365
dangerous places, protection at, § 3322e.....	366
day's labor, fixing number of hours, § 3322b.....	364
day's labor, hours of—law fixing proper exercise of police power, § 3322e...	365
eight-hour policy declared, § 3322f....	366
employers, duties of, § 3298.....	362
employees of railways, § 3322a.....	363
female employees—hours constituting day's labor, § 3322c.....	364
female employees, seats for, § 3322c.	364

EMPLOYEES, PROTECTION FOR—Cont'd.

labor bureau, duties of, § 3297.....	361
penalty for failure to protect, § 3322e.	366
posting copy of act in mills, etc., § 3322e.....	366
public contracts, under the provisions of law as to hours of day, § 3322b..	364
repeal—offices abolished, § 3304b....	363
ventilation of rooms or factories, § 3322e.....	366
street-car companies' employees must be competent, § 3322d.....	365
competent, defined, § 3322d.....	365
penalties for employing incompetent person by street-car companies, § 3322d.....	365

Foreclosure of Realty Mortgage**ENFORCEMENT OF JUDGMENTS.****Executions—Levy:**

adverse claims to property levied on, § 5262.....	581
exemptions, exceptions to rule, § 5256.	581
farmers' tools, § 5243.....	581
laborers' wages, § 5248a.....	581
mechanics' exemptions, § 5248.....	580
franchises, levy on and sale of, § 5203.	579
homesteads—assignment to family, § 5246.....	580
exemption from sale, § 5217.....	580
how abandoned, § 5220.....	580
levy on, § 5222.....	580
mortgage of, by spouses, § 5219....	580
selection of, § 5214.....	579
money, levy on, duty of sheriff, § 5197.....	579
partnership property, § 5271.....	588
record of sheriff's deed, condition precedent to, § 5298.....	589

Redemption:

certificate of, to be recorded, § 5282..	585
conveyance by sheriff, duty to make, § 5297	588
deed of sheriff, when to be made, § 5282	585
evidence of right, § 5285.....	586
notice of intention to, § 5284	585
notice of redemption (old), § 5295...	586
order of redemptions, § 5283.....	585
possession during redemption period, § 5296	588
right of, to whom given, § 5279.....	584
right of, when to be exercised, § 5280	584
rents and profits during period of, § 5292	587
subsequent redemptions, how and by whom exercised, § 5281	584
waste during redemption period, § 5295	588

Sales Under Execution and Decree:

confirmation of sale (old), § 5292....	586
confirmation—payment of proceeds of—resale, § 5278	583
decrees of foreclosure, § 5273.....	581
deficiency judgment, § 5274	582
objections to confirmation (old), § 5256	581
how made, § 5276	583

ENFORCEMENT OF JUDGMENTS—Cont'd.

judgment debtor's rights after sale (old), § 5299	589
notice of sale, § 5275	582
objections to confirmation (old), § 5292	586
possession, right of in purchaser (old), § 5292	586
separate parcels (old), § 5288	586
sales under foreclosure (old), § 5276	583
waiver of appraisal (old), § 5276	583
when absolute, when with redemption, § 5277	583

Supplemental Proceedings:

before whom begun, § 5335	590
facts authorizing, § 5312	590
facts authorizing order on debtor to deliver property to sheriff, § 5319	590
order to appear for examination of judgment debtor, when allowed, § 5312	590

Estates of Decedents—See PROBATE LAW AND PROCEDURE.

EVIDENCE.**Competency of Witnesses:**

conversations and transactions with deceased person, § 5991	633
incompetent by conviction of crime, § 5992	634
incompetent by reason of interest, § 5991	633
privileged communications — attorney and client, § 5934	634
privileged communications, husband and wife, § 5994	634

Depositions:

attendance of witnesses to give, § 6031	635
application for order to compel witness to give deposition, § 6031	635
power of superior court to compel, § 6031	635
condition upon which order is made, § 6031	635
documentary evidence—record of courts of sister states, § 6040	635
oaths and affirmations, form to suit religious belief, § 6057	636

Examination of Parties:

interrogatories, answers not conclusive, § 6012	634
as evidence, § 6010	634
evasiveness, § 6010	634
to adversary, striking, § 6009	634

Exceptions—See ISSUES; TRIAL AND JUDGMENT.

Execution—See ENFORCEMENT OF JUDGMENTS.

EXECUTIVE DEPARTMENT.

accountancy, state board of, § 209	30
examinations by, § 209	31
penalty for violating provisions of act, § 209	31
persons eligible to examination by, § 209	31

SUPP. WASH. CODE—48

EXECUTIVE DEPARTMENT—Continued.

powers and duties of, § 209	30
auditor, duties of, § 134	27
governor, removal of officers by, § 107	26
pardons, board of, § 204	29
pardoning power under constitution, §§ 204-208	29
parol of convicts, § 208a	29
Historical Society:	
ex-officio members of, § 209a	32
limitations upon appropriations for, § 209a	32
powers conferred upon, § 209a	31
printing, state board of, § 190	29
records and property of held in trust for state, § 209a	32
secretary of state—clerks for, § 126	27
custodian of records, § 115	27
duties of, § 115a	27

Executor and Administrator—See PROBATE LAW AND PROCEDURE.

Exemption—See ENFORCEMENT OF JUDGMENTS.

Experiment Station—See EDUCATION (agricultural college).

Eyeglasses and Spectacles—See POLICE AND SANITARY REGULATIONS.

Fees—See FISHERIES (catching and selling, license for; oysters, propagation, etc.); LIENS AND ENFORCEMENT OF (employees, mechanics and materialmen; real estate mortgages); OFFICERS (bonds, official); POLICE AND SANITARY REGULATIONS (insurance companies; pharmacy); PRIVATE CORPORATIONS (insurance companies); REVENUE AND TAXATION (delinquency certificates); SALARIES OF COUNTY OFFICERS, FEES AND COSTS; STATE LANDS (arid lands).

Female Employees—See EMPLOYEES, PROTECTION FOR; CRIMES AND PUNISHMENT (public morals and decency).

Ferries—See HIGHWAYS.

Forgery—See CRIMES AND PUNISHMENTS.

Former Conviction—See CRIMES AND PUNISHMENTS (offenses not specially provided for).

FINANCE.**Funding Municipal Indebtedness:**

funding bonds, when issued, § 1892	149
bids for, § 1892	149
notice of issue, § 1892	150
restrictions upon sale of, § 1892	150

Funds of Municipalities for Current Expenses:

anticipated revenue of municipalities, § 1898	150
---	-----

Validating Municipal Indebtedness:

definition of terms, § 1880	149
mode of proceeding, § 1880	148
requisite majority of votes, § 1880	149

FINANCE—Continued.

- validated debt must not cause excess of constitutional limit, § 1880..... 149
- what may be cured, § 1880..... 148

Findings—See ISSUES, TRIAL AND JUDGMENT (trial by court).

FIRES, PERMITTING TO SPREAD—DAMAGES.

- closed season for burning slashings, § 3140..... 353
- notice of, to be published, § 3140... 354
- permission to burn during, § 3140... 354
- deputy wardens, duties of, § 3140.... 354
- exceptions to provisions of act, § 3140 355
- fire patrolmen, ex-officio—who are, § 3140 353
- fire patrolmen, who may be appointed, § 3140..... 353
- penalties for violations of act, § 3140.. 355
- spark-arresters, duty to use—penalty for failure to use, § 3140..... 355
- state fire warden, deputies—county commissioners, ex-officio, § 3140..... 353
- duties of, § 3140..... 353
- state land commissioners, ex-officio, § 3140..... 353

Fish—See FISHERIES.

Fish Commissioners—See FISHERIES.

Fish Hatcheries—See FISHERIES.

FISHERIES.

- Catching and Selling Fish:**
- appliances—length and situation, § 3351a..... 375
- closed season—by commissioner—time—place—notice—penalties, § 3354b.. 380
- commissioner may administer oaths, § 3360..... 380
- devices—license for use of, § 3349a... 373
- restrictions, use of, § 3347a..... 373
- fees for licenses to locators, § 3351d. 376
- licenses and fines, disposal of, § 3355. 380
- license—assignment of, § 3349a..... 382
- limitations, § 3349a..... 383
- location of, § 3351k..... 382
- location of, § 3353..... 383
- must be located, § 3349..... 382
- to canners—fees for, § 3351g..... 377
- basis of license fee, § 3351h..... 378
- rights acquired by, § 3349..... 383
- to fishermen, § 3351b..... 375
- to fishermen—forfeiture, § 3351b... 382
- to fishermen, how issued, § 3351c... 376
- to be posted on device, § 3350a.... 374
- to others than canners' fees, minimum, § 3351f..... 377
- location of appliances, § 3351a..... 382
- how made—restrictions as to location, § 3351k..... 379
- location from shore, § 3347a..... 373
- location of three-mile limit by commissioner, not appealable, § 3347a.. 373
- locations under, conflicts, § 3351a.... 382
- penalties for fishing without license, § 3354a..... 379
- penalties for violations of act, § 3361b 381

FISHERIES—Continued.

- "person" and "persons" defined, § 3361..... 381
- repealing clause, § 3361c..... 381
- reports confidential, § 3361a..... 381
- reports of catch, § 3351e..... 377
- reports of fish taken, § 3359 380
- "salmon," definition of § 3357..... 380
- unlawful fishing as to time, place, § 3351i..... 378
- United States officers may take for propagation purposes, § 3358..... 380
- commissioner—salary, § 3331..... 368
- deputy fish commissioner—bond—duties of, § 3332..... 368
- Hatcheries:**
- Baker hatchery transferred to United States, § 3342a..... 368
- Big Quilcene river hatchery, establishment of, § 3342d..... 373
- Colville river hatchery established, § 3342b.... 370
- Dakota creek hatchery, establishment of, § 3342d..... 373
- dealers in fish—license—fee for, § 3342c..... 372
- disbursements for, how made, § 3342b 371
- Dungeness river hatchery established, § 3342b..... 370
- establishment of, conditions precedent to, § 3342b..... 371
- establishment to be in order named in act, § 3342b..... 370
- fishing license, forfeiture of, § 3349... 382
- Grays river hatchery, establishment of, § 3342d..... 373
- Klickitat river hatchery established, § 3342b..... 370
- license fund, appropriation of, § 3342c 372
- little Spokane river hatchery established, § 3342b 370
- Methow river hatchery established, § 3342b..... 370
- Nisqually river hatchery established, § 3342b..... 370
- Nooksack hatchery established, § 3342b..... 369
- penalties for violation of act, § 3342c. 373
- private fish hatcheries authorized, § 3342c..... 371
- definition, § 3342c..... 372
- exclusive right of, § 3342c..... 372
- license fee, § 3342c..... 372
- passageways, § 3342c..... 371
- reports of, § 3342c..... 372
- sale of product, regulations, § 3342c. 372
- sale of fish spawn, etc., from approval of, § 3342c..... 372
- tags and brands for product, § 3342c 373
- repealing clause, § 3342c..... 373
- Samish lake hatchery established, § 3342b..... 370
- Skagit river hatchery established, § 3342b..... 370
- Skokomish hatchery established, § 3342b..... 369
- Skookum bay hatchery establishment of, § 3342d..... 373

FISHERIES—Continued.

Snohomish river established, § 3342b.	370
Stillaguamish river hatchery established, § 3342b.....	370
Wenatchee hatchery established, § 3342b.....	369
White river hatchery established, § 3342b.....	370
Willapa harbor hatchery established, § 3342b.....	369
Wind river hatchery established, § 3342b.....	369

Oysters, Propagation and Gathering: appropriation for execution of act, § 3377a	387
closed season for gathering, § 3375....	383
commission—duties and powers, § 3377a	384
license—fees for, § 3377a....	386
licenses to take oysters, § 3377a....	385
meetings of commission, § 3377a....	384
meetings of commission—quorum, § 3377a	384
oyster fund—created how, § 3377a...	387
penalties for violations of act, § 3377a	387
propagation of eastern oysters. § 3377	384
reserves — established — surveyed and platted, § 3377a.....	385
“sack” defined, § 3377a.....	386
seals and sea lions—bounties for taking, § 3378.....	387
secretary—commissioner of public lands ex-officio secretary, § 3377a..	384
state oyster commission created, § 3377a	384

Food—See POLICE AND SANITARY REGULATIONS (bakeshops; dairy products).

Forcible Entry and Detainer—See POSSESSORY ACTIONS, etc.

Foreclosure—See LIENS AND ENFORCEMENT OF LIENS. *Realty Mortgages 581*

Foreign Corporations—See PRIVATE CORPORATIONS.

Forms—See REVENUE AND TAXATION (delinquency certificates; foreclosure); RIGHTS OF PROPERTY (deeds and other instruments, etc.; acknowledgments).

Fraternal Beneficiary Associations—See POLICE AND SANITARY REGULATIONS.

Fraternal Orders, Incorporation of—See PRIVATE CORPORATIONS.

Fraud and Deceit—See CRIMES AND PUNISHMENTS.

Frauds—See RIGHTS OF PROPERTY (frauds and perjuries).

Free Libraries—See EDUCATION.

Fruit—See HORTICULTURE.

Fruit Boxes—See POLICE AND SANITARY REGULATIONS.

Fund—See FINANCE.

Funding Indebtedness—See FINANCE.

Funding Municipal Indebtedness—See FINANCE.

Funds for Highways—See HIGHWAYS.

Gambling—See CRIMES AND PUNISHMENTS (public morals and decency).

Gambling Resorts, Maintenance of—See CRIMES AND PUNISHMENTS (public morals, etc.).

Game Birds—See CRIMES AND PUNISHMENTS (public trade, etc.).

Game Fish—See CRIMES AND PUNISHMENTS (public trade, etc.).

Game Law—See CRIMES AND PUNISHMENTS (public trade, policy and police economy).

Game Warden—See CRIMES AND PUNISHMENTS (public trade, etc.).

Garnishment—See PROVISIONAL REMEDIES.

Gas and Petroleum Lands—See STATE LANDS.

Gifts—See BENEVOLENT, REFORMATORY AND PENAL INSTITUTIONS (insane asylums).

Governor—See EXECUTIVE DEPARTMENT (powers of governor).

Grace, Days of—See BILLS OF EXCHANGE, etc.

Graded High Schools—See EDUCATION.

Grain Inspector—See POLICE AND SANITARY REGULATIONS (inspection of grain, etc.).

Grand Larceny—See CRIMES AND PUNISHMENTS (offenses against property).

Granted Lands—See STATE LANDS.

Grays River Hatchery—See FISHERIES (hatcheries).

Guardian—See PROBATE LAW AND PROCEDURE.

Guardian for Insane—See PROBATE LAW AND PROCEDURE.

Habeas Corpus—See PROBATE LAW AND PROCEDURE (orphans and abandoned minors); SPECIAL PROCEEDINGS.

Harbor Areas—See STATE LANDS (tide and shore lands).

Harbors, Improvement of—See HARBORS AND WHARVES.

Harbor Lines—See STATE LANDS (tide and shore lands).

HARBORS AND WHARVES.

Improvement of Harbors:	
insufficient appropriation of tide land funds for, § 4064.....	480
ship canal, granting right of way for to United State, § 4089a.....	482

HARBORS AND WHARVES—Continued.

- tide lands, filling by private contract,
§ 4080 481
- wharves and landings, county commis-
sioners may build, § 4079..... 480
- wharves and landings, right of way
for over state lands, § 4079..... 481
- wharves and landings, right of way
for over private lands—condemna-
tion of, § 4079.,..... 481

Hawkers and Peddlers—See POLICE AND
SANITARY REGULATIONS.

Health—See POLICE AND SANITARY
REGULATIONS (county boards of health;
state board of health).

Heirs—See RIGHTS OF PROPERTY (de-
scents and distribution of estates).

High Schools—See EDUCATION (graded
and high schools).

Highway—See HIGHWAYS.

HIGHWAYS.

- Bridges on County Roads:
bridges by county and city jointly, §
3838a 470

- Control and Management of:
contract work on highways authori-
zation by commissioners, § 3768.... 458
- shade trees and hedges authorized on
highways, § 3767b..... 457
- supervisors—election of, § 3769a..... 458
- supervisors—interest in contract, §
3770 458
- tramways on highways, authorized, §
3767a 457

- Ferries:
county may construct, purchase, con-
demn, etc., § 4063..... 480
- powers of county commissioners re-
specting, § 4063..... 480

- Funds and Labor for:
adoption of provisions of act by elec-
tors of state, § 3833a..... 467
- collection of road tax, § 3833a..... 465
- debtor may pay for his creditor, §
3833a 464
- extending on tax-rolls, § 3833a..... 465
- existing funds, transfer of, § 3833b.. 470
- employers to furnish lists of employees
subject to, § 3833b..... 467
- funds, how expended, § 3833a..... 466
- funds, how expended, § 3833b..... 469
- levy for road and bridge fund, § 3833a 465
- levy for road district fund, § 3833a. 465
- levy for county road and bridge fund,
§ 3833b 468
- levy for district road and bridge fund,
§ 3833b 469
- list of persons subject to, § 3833a.... 464
- lien on property for, § 3833a..... 464
- methods of collection cumulative, §
3833b 468
- methods of collection concurrent, §
3833a 465
- payment enforced, how, § 3833a..... 464
- poll tax, collection of, § 3833b..... 468

HIGHWAYS—Continued.

- poll tax, lien for, § 3833b..... 468
- poll tax, who must pay, § 3833b.... 467
- poll tax, who subject to, § 3833a... 464
- road and bridge funds, how expended,
§ 3833b 469
- road districts, § 3833b..... 468
- road districts for purpose of, § 3833a. 465
- supervisors, annual meetings, § 3833a. 466
- supervisors, appointment of—bond—re-
moval, § 3833a..... 465
- supervisors, compensation—bond and
removal, § 3833b 469
- supervisors' duties, § 3833b..... 469
- supervisor, duties of, § 3833a..... 466
- supervisors' meetings with county
board, § 3833b..... 469
- when act takes effect, § 3833b..... 470

- Laying Out and Opening:
bond by petitioners, § 3774..... 460
- condemnation of land—community
property, § 3781..... 462
- condemnation — tender — prior to —
costs, § 3787..... 462
- damages allowed subsequent to appro-
priation, § 3782a..... 462
- damages, claims for, § 3778..... 462
- grants of United States of highways,
acceptance by commissioners author-
ized, § 3771c..... 459
- hearing of petition by commissioners—
order, § 3798..... 463
- jurisdiction of commissioners, petition
fixes, § 3773 460
- map of highway, prepared and filed,
§ 3779 462
- ocean shore and beach declared high-
way, § 3771a 458
- ocean shore and beach declared high-
way, § 3771b 459
- petition for highway, § 3772..... 460
- petition for highway—sufficiency of,
description of location, § 3773..... 460
- petition—jurisdictional, § 3772..... 460
- petitioner, qualifications of, § 3772.... 460
- report of viewers, § 3777..... 461
- vacation, approval of plat not to oper-
ate a, § 3799 463
- vacation, expense of and collection,
§ 3799 463
- vacation of highways—petition and
bond for, § 3798..... 462
- vacated, when, § 3799..... 463
- vacation, objections to; hearing and
notice, § 3799..... 463
- vacation—report of surveyor on, §
3798 463
- viewers, appointment of, § 3775..... 460
- viewers' duties, § 3776..... 461

- Paved Roads:
appeal from order of commissioners,
§ 3933 472
- construction contract, § 3951..... 472
- dismissal of proceedings, costs to peti-
tioner, § 3926 471
- inspection of work by commissioner,
§ 3948 472

HIGHWAYS—Continued.

- inspection of work by county surveyor, § 3948 472
- order for improvement—duty of engineers, § 3927 471
- payment for improvements on, § 3946. 472

Private Ways of Necessity for Logging:

- appeal not to delay construction, § 4047m 479
- abandonment—vacation, § 4047i..... 479
- condemnation of right of way, § 4047a 476
- appeal from, § 4047l..... 479
- application for to superior court, § 4047b 476
- appointment of commissioners, § 4047c 477
- damages, how paid, § 4047j..... 479
- judgment—parties—others to use, § 4047g 478
- notice to owners, § 4047d..... 477
- report of commissioners, exceptions to, § 4047e 478
- trial by jury, § 4047f..... 478
- construction of act, § 4047h..... 479

State Road Marble Mount:

- appropriation for, § 3977..... 474
- commission for construction, § 3973.... 473
- term of office of—vacancy—removal, § 3974 473
- oath, bond of, § 3975..... 473
- powers of, § 3976..... 473
- commissioners, compensation of, § 3979 474
- conditions precedent to construction, § 3978a 474
- construction authorized, § 3972..... 472
- construction by contract, § 3983..... 475
- disbursement of appropriation, § 3982 475
- maintenance of, § 3981..... 474
- property and funds of with Cascade road commission appropriated to, § 3983a 475
- records of, where kept, § 3980..... 474
- right of way for, § 3977 473

Hogs—See DOMESTIC ANIMALS.**Homestead—See ENFORCEMENT OF JUDGMENTS; PROBATE LAW AND PROCEDURE (support of family; exemptions).****Homicide—See CRIMES AND PUNISHMENTS (offenses against the person).****Hops, Inspection of—See AGRICULTURE.****Hoquiam Harbor Lines—See STATE LANDS.****Hoquiam Tide Lands—See STATE LANDS.****Horse Shoeing—See POLICE AND SANITARY REGULATIONS.****HORTICULTURE.**

- commissioner of, appointment—location—oath, § 3545 402
- duties—compensation—deputy, § 3546 402
- removal, § 3547 403
- county inspector, duties of—penalties for disobedience to orders, § 3556.. 407
- compensation of, § 3560..... 407

HORTICULTURE—Continued.

- powers of, § 3555..... 406
- privileges, § 3558..... 408
- substitution of, § 3555a 406
- county societies—inspectors, § 3548... 403
- disease, to prevent spread of, § 3554... 405
- disinfection—owner's failure to, inspector may—destruction of stock, § 3559 408
- exhibit of fruit—appropriation for, § 3561 409
- inspector's institutes—failure to attend—penalty, § 3562 409
- license to sell fruit trees, § 3549..... 404
- how obtained—bond—liabilities on, § 3550 404
- penalties for hindrances to act, § 3563 409
- penalties for importing diseased nursery stock, disposing of, § 3557..... 405
- penalties for selling in violation of act, § 3552 403
- repeal of prior act, § 3564..... 410
- shipments of stock, notice of to be given commissioner, § 3551..... 405

Husband and Wife—See DOMESTIC RELATIONS.**Idiots—See PROBATE LAW AND PROCEDURE (guardianship of idiots and insane persons).****Illegitimates—See RIGHTS OF PROPERTY (descents and distributions of estates).****Improved Roads—See HIGHWAYS (paved roads).****IMPROVEMENT OF NAVIGABLE RIVERS.****River Improvement Districts—Organization:**

- assessments and collections governed by general laws, § 4089v..... 487
- biennial election of officers voting precincts, law governing, § 4089h..... 484
- boards of directors, § 4089g..... 484
- bonds for improvement, when and how issued, § 4089o 485
- bonds, how paid, 4089q..... 486
- bonds, sale of, § 4089p..... 486
- canvass of vote for organization, § 4089f 483
- directors' meetings, time of, § 4089k. 484
- directors' meetings, regular and special, § 4089m 485
- directors, powers of, § 4089n..... 485
- directors, term of office, who eligible to, § 4089i..... 484
- directors to have no salaries; not to be interested in contracts—penalty, § 4089w 487
- directors, who eligible to, § 4089j... 484
- elections, how conducted, § 4089d..... 485
- interest and sinking fund, § 4089u... 487
- interest, payments, § 4980t..... 487
- limit of debt of, § 4089r..... 486
- sinking fund, how created, § 4089s... 486
- petition, to whom, bond notice, hearing, § 4089c 482
- voter, who is, § 4089e..... 483

IMPROVEMENT OF NAVIGABLE RIVERS—Continued.

Improvements—See EMINENT DOMAIN; IMPROVEMENT OF NAVIGABLE RIVERS; HARBORS AND WHARVES; DRAINAGE DISTRICTS; POSSESSORY ACTIONS (ejectment); STATE LANDS (leasing school and granted lands; tide and shore lands); LIENS AND ENFORCEMENT OF LIEN (mechanics and materialmen).

Incest—See CRIMES AND PUNISHMENTS (offenses against public morals and decency).

Incorporation—See CITIES AND TOWNS.

Indebtedness—See CITIES AND TOWNS (bonds, consolidation, sewers and drains; water and lighting plants); CITIES OF FIRST CLASS (additional powers); COUNTIES (Chelan county); EDUCATION (division of territory); IMPROVEMENT OF NAVIGABLE RIVERS; MILITIA (miscellaneous); PRIVATE CORPORATIONS (trust companies).

Indorsement—See BILLS OF EXCHANGE, etc.; TRADE AND COMMERCE (bills of lading; warehouse receipts).

Indians—See RIGHTS OF PROPERTY (deeds and other instruments).

Indigent—See BENEVOLENT, REFORMATORY AND PENAL INSTITUTIONS.

Infectious Disease—See DOMESTIC ANIMALS; POLICE AND SANITARY REGULATIONS (bakeshops; county boards of health; state veterinary surgeon).

Information—See CRIMINAL PROCEDURE; POLICE AND SANITARY REGULATIONS (dairy products).

Injunction—See PROVISIONAL REMEDIES.

Insane Asylums—See BENEVOLENT, REFORMATORY AND PENAL INSTITUTIONS.

Insane Persons—See PROBATE LAW AND PROCEDURE (guardians for idiots and insane persons).

Insolvency—See PRIVATE CORPORATIONS (organization and management); SPECIAL PROCEEDINGS (assignments for benefit of creditors).

Inspection and Sale of Liquors—See POLICE AND SANITARY REGULATIONS.

Inspection of Petroleum—See POLICE AND SANITARY REGULATIONS.

Inspection and Weighing of Grain—See POLICE AND SANITARY REGULATIONS.

Inspector—See CITIES AND TOWNS (public health); DOMESTIC ANIMALS (sheep inspector); HORTICULTURE (county inspector); POLICE AND SANITARY

INSPECTOR.—Continued.

REGULATIONS (inspection of liquors; inspector of petroleum oils; inspection of grain).

Insurance—See PRIVATE CORPORATIONS, POLICE AND SANITARY REGULATIONS.

Insurance Commissioner—See OFFICERS (surety companies); POLICE AND SANITARY REGULATIONS (fraternal and benevolent associations; insurance companies).

Insurance Companies, Mutual, Fire and Marine—See PRIVATE CORPORATIONS.

Insurrection—See MILITIA.

Interest—See CITIES AND TOWNS (bonds for local improvements; reassessments); EDUCATION (bonds of school districts); IMPROVEMENT OF NAVIGABLE RIVERS (improvement district); PRIVATE CORPORATIONS (building and loan association); REVENUE AND TAXATION (real estate tax).

Interpleader—See CIVIL PROCEDURE (parties).

INTEREST.

act not retroactive as to judgments, §

3672 440

antecedent contracts, § 3668..... 438

begins to accrue, when, § 3668..... 438

city warrants, § 3671..... 440

judgments, § 3670c..... 439

laws of sister state, § 3668..... 438

maximum rate, § 3639..... 439

municipal warrants, § 3670a..... 439

rate in absence of contract, § 3668... 438

rate on warrants fixed by issuing of-

ficer. § 3670b..... 439

repeal of prior acts, § 3672a..... 440

state warrants, § 3670..... 439

usury, § 3671..... 439

Intervention—See CIVIL PROCEDURE; PARTIES.

Interrogatories—See EVIDENCE (examination of parties).

Invasion—See MILITIA.

Irrigation—See WATER RIGHTS.

Irrigation Districts—See WATER RIGHTS.

Issues—See ISSUES; TRIAL AND JUDGMENT.

ISSUES, TRIALS AND JUDGMENT.

Arbitration:

award, effect of judgment, § 5112..... 574

objections to award, § 5106..... 574

Costs and Disbursement:

attorneys' fees, § 5165..... 578

attorneys' fees in foreclosure, § 5166 578

attorneys' fees—separate defense, §

5171 578

cost bond from nonresident plaintiffs,

§ 5185 579

ISSUES, TRIALS AND JUDGMENT—

Continued.

retaxation of, § 5185.....	579
witness' fees, § 5173.....	578

Exceptions:

bills of exception, how exhibits, etc., embodied, § 5059.....	568
bill of exception, notice of filing, § 5058	568
bills of exception, notice to settle—amendments, § 5058	568
in court cases, § 5052.....	567
in jury cases, § 5053.....	568
manner of taking and entering, § 5055	568
necessary, when, § 5052.....	568
review of on appeal, § 5056.....	568
statements of fact—filing, extension of time for, § 5062.....	569
statements of fact—how certified, § 5060	569
statements of fact—settlement of on change or death of judge, § 5061....	569
statement of facts, when sufficiently certified, § 5060.....	569
when and how taken, § 5051.....	567

Judgments by Default:

dismissal for disobedience to order of court, § 5090	574
for want of answer, § 5090.....	573
judgments by default in excess of claim, § 5090	574

Judgments in General:

presumption of validity on collateral attack, § 5080.....	572
---	-----

Judgment Liens:

duration of, § 5148.....	575
judgment from justice's court on transcripts, § 5136.....	575

Judgment, Manner of Taking and Entering:

entered on verdict, exceptions, § 5115	574
entry of, § 5115.....	574
in replevin, § 5118.....	574

Judgments of Nonsuit:

insufficiency of evidence, § 5085.....	572
motion for too late, § 5085.....	573
res judicata, when, § 5085.....	573
voluntary, § 5085.....	573

New trials:

abuse of discretion of court, § 5071....	571
excessive damage by reason passion or prejudice, § 5071.....	572
insufficiency of evidence, § 5071.....	569
misconduct of jury, § 5071.....	570
newly discovered evidence, § 5071....	571
notice of motion for, § 5075.....	572
on one of several grounds, § 5071....	571
renewal of motion for, § 5071..	571
surprise, § 5071	570
terms of allowance of, § 5071.....	570
Revivor of Judgments, § 5148.5149..	576

Trials of Civil Actions:

challenge for actual bias, § 4985.....	563
continuance, sufficiency of showing for, § 4977.....	562

ISSUES, TRIALS AND JUDGMENT—

Continued.

discharge of jury without verdict—

criminal causes—jeopardy, § 5006....	565
evidence taken to jury-room, § 5004..	565
jury—implied bias defined, § 4984....	563
notice of, § 4970..	562
jury trial, right of, defined, § 4967...	561
nonsuit for insufficiency of evidence, § 4994	565
order of proceeding—argument waiver of, § 4993.....	564
order of proceeding—burden of proof, § 4993.....	565
order of proceeding—charging jury as to matters of law only, § 4993....	564
order of proceeding in—charging jury, § 4993	563
particular cause of challenge of jurymen, § 4983	562
peremptory challenge of juror, how taken, § 4987	563
pleadings, when to be filed, § 4972...	562
qualification of jurymen, § 4978.....	562
separation of jury, § 4999.....	565

Trial by Court—Waiver of Jury:

by court findings and conclusions, § 5029	566
findings by court, § 5030	567
waiver of jury—presumed when, § 5028	566

Vacation and Modification of Judgments:

fraud in obtaining, § 5153.....	577
irregularity in obtaining, § 5153.....	576
limitations on, as to time, § 5153.....	577
meritorious defense, § 5153.....	576
petition for, § 5156.....	578
proceedings for, § 5153.....	577
unavoidable casualty or misfortune, § 5153	577
valid defense, necessity of, § 5158...	578
void judgments, § 5153.....	577

Verdicts:

special findings of jury, § 5021.....	565
special verdict, § 5022.....	566
verdict in action of replevin, § 5020...	565

Judges of Superior Courts—See COURTS; JUDICIAL DEPARTMENT (superior courts).**Judge of Supreme Court—See COURTS; JUDICIAL DEPARTMENT.**

Judgment—See APPEALS TO SUPREME COURT; CIVIL PROCEDURE (amendment of pleadings; limitation of actions); CRIMINAL PROCEDURE, IN COURTS OF RECORD; DRAINAGE DISTRICTS (payment of warrants issued under act of 1895); EMINENT DOMAIN; ENFORCEMENT OF JUDGMENTS; INTEREST; ISSUES, TRIAL AND JUDGMENT; JUSTICES' COURTS; LIENS AND ENFORCEMENT OF LIENS (real estate mortgages); POSSESSORY ACTIONS (forcible entry and detainer); SPECIAL PROCEEDINGS (habeas corpus).

Judgment Liens—See ISSUES, TRIAL AND JUDGMENT.

JUDICIAL DEPARTMENT.**Superior Courts:**

judges—appointment of, § 235.....	33
election of, § 235.....	33
Adams county—additional judge for, § 235	34
Chelan county—additional judge for, § 235	34
Douglass county—additional judge for, § 235	34
Ferry county—additional judge for, § 235	34
King county, additional judge for, § 235	33
election of, § 235	33
King county—additional judge for, § 235	34
appointment of, § 235	34
election of, § 235.....	34
Lincoln county—additional judge for, § 235	34
appointment of additional judges, § 235	34
election of additional judges, § 235...	34
Okanogan county—additional judge for, § 235.....	34
Thurston and Mason counties joined for judicial purposes, § 235.....	35
Supreme Court—number of judges. § 210	32
appointment of judges of, § 210.....	32

JUSTICES' COURTS, PROCEDURE IN.

appeals from justices' court—notice, § 6755	671
examination before justice—complaint, § 6695	670
garnishment—examination of garnishee, § 6606.....	670
judgment for costs in peace proceedings—lien on land, § 6687.....	670
process in justices' courts—style, § 6546	669
return of process in justice courts, § 6547	669
service of process—by whom—return, § 6548	670
venue in justices' courts, § 6542a....	669
warrant—sufficiency of, § 6695.....	671

Judicial Officers—See COURTS.

Jurisdiction of Superior Court—See SPECIAL PROCEEDINGS (certiorari; mandamus; prohibition).

Jurisdiction of Supreme Court—See SPECIAL PROCEEDINGS (certiorari; mandamus; prohibition).

Jurors—See COURTS; SALARIES OF COUNTY OFFICERS; FEES AND COSTS.

Jury—See CRIMINAL PROCEDURE; ISSUES, TRIAL AND JUDGMENT (exception; trials of civil actions; waiver of jury); **LIENS AND ENFORCEMENT OF LIENS** (mechanics and materialmen).

Justices of Peace—See COUNTY GOVERNMENT; COURTS; SALARIES OF COUNTY OFFICERS, etc.

Justices' Courts—See COURTS.

Juvenile Offenders—See BENEVOLENT, REFORMATORY AND PENAL INSTITUTIONS (state reform school).

Kidnaping—See CRIMES AND PUNISHMENTS (offenses against the person).

King County—See JUDICIAL DEPARTMENT (superior courts).

Kittitas County—See COUNTIES.

Klickitat River—See FISHERIES (hatcheries).

Laborers' Liens—See LIENS AND ENFORCEMENT OF LIENS

Laborers on Logs and Timber—See LIENS AND ENFORCEMENT OF LIENS.

LABORERS ON PUBLIC WORKS.

contractor's bond, action on, parties, § 5925	627
action on, defenses, § 5925.....	628
penalty, conditions, § 5927.....	628
remedy, § 5925	627
surety as assignee of contract, liability of, § 5925.....	627
time of execution, § 5925.....	627

La Conner Tide Lands—See STATE LANDS.

Landlord and Tenant—See POSSESSORY ACTIONS (forcible entry and detainer).

Lands—See STATE LANDS.

Larceny—See CRIMES AND PUNISHMENTS.

Larceny from Person—See CRIMES AND PUNISHMENTS (offenses against property).

Lease—See RIGHTS OF PROPERTY.

Legal Holiday—See EDUCATION (teachers).

LEGISLATIVE.**Apportionment for Representatives:**

first district, § 59	19
second district, § 59.....	19
third district, § 59.....	19
fourth district, § 59.....	19
fifth district, § 59.....	20
sixth district, § 59.....	20
seventh district, § 59.....	20
eighth district, § 59.....	20
ninth district, § 59.....	20
tenth district, § 59.....	20
eleventh district, § 59.....	20
twelfth district, § 59.....	20
thirteenth district, § 59.....	21
fourteenth district, § 59.....	21
fifteenth district, § 59.....	21
sixteenth district, § 59.....	21
seventeenth district, § 59.....	21
eighteenth district, § 59.....	21
nineteenth district, § 59.....	21
twentieth district, § 59.....	21
twenty-first district, § 59.....	21

LEGISLATIVE—Continued.

twenty-second district, § 59.....	21
twenty-third district, § 59.....	21
twenty-fourth district, § 59.....	21
twenty-fifth district, § 59.....	21
twenty-sixth district, § 59.....	22
twenty-seventh district, § 59.....	22
twenty-eighth district, § 59.....	22
twenty-ninth district, § 59.....	22
thirtieth district, § 59.....	22
thirty-first district, § 59.....	22
thirty-second district, § 59.....	22
thirty-third district, § 59.....	22
thirty-fourth district, § 59.....	22
thirty-fifth district, § 59.....	22
thirty-sixth district, § 59.....	23
thirty-seventh district, § 59.....	23
thirty-eighth district, § 59.....	23
thirty-ninth district, § 59.....	23
fortieth district, § 59.....	23
forty-first district, § 59.....	23
forty-second district, § 59.....	24
forty-third district, § 59.....	24
forty-fourth district, § 59.....	24
forty-fifth district, § 59.....	24
forty-sixth district, § 59.....	24
forty-seventh district, § 59.....	24
forty-eighth district, § 59.....	24
forty-ninth district, § 59.....	25
fiftieth district, § 59.....	25
fifty-first district, § 59.....	25
fifty-second district, § 59.....	25
fifty-third district, § 59.....	25
fifty-fourth district, § 59.....	25
fifty-fifth district, § 59.....	25
fifty-sixth district, § 59.....	25
election of senators in 1902, § 59....	25
election of senators in 1904, § 59....	25
election of senators in 1902, § 59.....	26
election of representatives, § 59.....	26
Apportionment of Senators:	
first district, § 58.....	14
second district, § 58.....	14
third district, § 58.....	14
fourth district, § 58.....	14
fifth district, § 58.....	14
sixth district, § 58.....	15
seventh district, § 58.....	15
eighth district, § 58.....	15
ninth district, § 58.....	15
tenth district, § 58.....	15
eleventh district, § 58.....	15
twelfth district, § 58.....	15
thirteenth district, § 58.....	15
fourteenth district, § 58.....	16
fifteenth district, § 58.....	16
sixteenth district, § 58.....	16
seventeenth district, § 58.....	16
eighteenth district, § 58.....	16
nineteenth district, § 58.....	16
twentieth district, § 58.....	16
twenty-first district, § 58.....	16
twenty-second district, § 58.....	16
twenty-third district, § 58.....	16
twenty-fourth district, § 58.....	16
twenty-fifth district, § 58.....	16
twenty-sixth district, § 58.....	17
twenty-seventh district, § 58.....	17

LEGISLATIVE—Continued.

twenty-eighth district, § 58.....	17
twenty-ninth district, § 58.....	17
thirtieth district, § 58.....	17
thirty-first district, § 58.....	17
thirty-second district, § 58.....	18
thirty-third district, § 58.....	18
thirty-fourth district, § 58.....	18
thirty-fifth district, § 58.....	18
thirty-sixth district, § 58.....	18
thirty-seventh district, § 58.....	18
thirty-eighth district, § 58.....	18
thirty-ninth district, § 58.....	19
fortieth district, § 58.....	19
forty-first district, § 58.....	19
forty-second district, § 58.....	19
expenses—payment of claims against state, § 71.....	26
Libel —See CIVIL PROCEDURE (general rules of pleading).	
Library —See EDUCATION (free libraries; state library commission).	
License —See CITIES AND TOWNS (pub- lic health); CITIES OF FIRST CLASS (additional powers); CITIES OF FOURTH CLASS (bicycles); FISHERIES (catching and selling; hatcheries; oysters); OFFICERS (bonds, surety companies;) POLICE AND SANITARY REGULATIONS (dairy pro- ducts; dentistry; eyeglasses; hawkers and peddlers; sale of liquors; insurance com- panies; medicine, practice of; pharmacy, practice of); PRIVATE CORPORATIONS (insurance companies; mining companies; banking corporations).	
Lien —See COURTS (attorneys); LIENS AND ENFORCEMENTS OF LIENS; IS- SUES TRIAL AND JUDGMENTS (judg- ment liens); REVENUE AND TAXATION (collection of tax; inheritance tax).	
LIENS AND ENFORCEMENT OF LIENS.	
Chattel Mortgages:	
constable no authority in, § 5871.....	622
contested foreclosure, injunction, § 5876	622
deficiency after foreclosure, § 5880...	623
possession by due process of law, § 5878	623
service of notice of foreclosure, § 5871	622
Employees:	
attorneys' fees, § 5922	627
complaint, sufficiency of, § 5920.....	627
foreclosure, § 5922.....	627
insolvency, § 5981	632
levies of legal process, § 5983.....	633
notice of lien, § 5920.....	627
helpers' wages, lien for, § 5919.....	627
priorities, § 5919	627
Laborers on Logs and Timber:	
amendments of claim, etc., § 5944....	630
bona fide purchaser as to lien, § 5944	630
demand before suit, to give costs, § 5941	630

LIENS AND ENFORCEMENT OF LIENS—

Continued.

errors in statement for do not invali-	Page
date lien, § 5944	630
foreclosure, parties necessary, § 5940.	629
joinder of actions and attorney's fees,	
§ 5946	630
lien on lumber, § 5931.....	629
lien on shingles in manufactor's pos-	
session, § 5931..	629
lien for stumpage—waiver, § 5932....	629
nonlienable items, effect of, § 5944...	630
purchaser's liability, § 5944.....	630
sheriff to be receiver in foreclosure of,	
§ 5941	629
sheriff as receiver—effect of super-	
seedeas, § 5941	630
waiver of lien, § 5930.....	629
finished product. lien on, § 5930.....	629
who may have lien, § 5930.....	629

Mechanics and Materialmen;

attorney fees, provision for valid, §	
5911	626
claim or notice—amendments of, §	
5904	625
claim or notice—entire contract for	
different or several properties, §	
5907.....	626
claim or notice filed as evidence, §	
5904	625
claim or notice—names of owners, §	
5904	625
claim or notice—terms of contract, §	
5904	625
complaint in, sufficiency of, § 5900...	624
contractor's lien, extent of, § 5909...	626
foreclosure, evidence in, § 5910.....	626
improvements foreclosure of lien on,	
when land not subject to, § 5916 \$..	627
interest in land subject to lien, § 5901	624
jury trial not a right in, § 5910....	626
leasehold interest, § 5901	624
lessee as agent of owner, § 5900.....	623
lien of laborer for improvements, §	
5902	624
limitation, in liens on community prop-	
erty, § 5908	626
limitation of actions on, § 5908.....	626
nonlienable item—effect of inclusion,	
§ 5900	624
notice or claim, sufficiency of descrip-	
tion, § 5904	625
parties, contractor and materialman,	
§ 5910	626
parties to foreclosure, community, §	
5910	626
priorities—laches in asserting, § 5903.	624
priorities of liens, § 5903.....	624
when liens attach, § 5903.....	625

Real Estate Mortgages:

adverse title, not tried in foreclosure,	
§ 5885	623
attorney's fees in foreclosure of, §	
5885	623
concurrent actions—judgment errone-	
ous but not void, § 5893.....	623
deficiency judgment, when given, §	
5888	623

LIENS AND ENFORCEMENT OF LIENS—

Continued.

installments not due when foreclosure	Page
had, § 5894	623
judgment limited to mortgaged prop-	
erty, § 5888a	623
proceedings under decree—sale, § 5890	623
venue of property in different counties,	
§ 5885	623

Storage and Advanced Charges:

sales in excess of lien, § 5596.....	632
--------------------------------------	-----

Vessels, Boats, Liens Upon:

damages for breach of contract, §	
5953a	632
arising from torts, § 5955.....	632
enforcement of liens, § 5955.....	632
limitation of actions for, § 5955	632
liens, for what given, § 5953.....	631
priorities, § 5955	632
repealing clause, § 5953	631
vessels included in provisions, § 5953	631

**Life Estate—See REVENUE AND TAX-
ATION (inheritance tax).****Limitations—See CITIES AND TOWN
(enforcement of assessments; reassess-
ments); CITIES OF FIRST CLASS (addi-
tional powers; assessments; local improve-
ments); CIVIL PROCEDURE (limitations
of actions); IMPROVEMENT OF NAVIG-
ABLE RIVERS (river improvement dis-
tricts); ISSUES, TRIAL AND JUDGMENT
(vacation of judgments); LIENS AND EN-
FORCEMENT OF LIENS (mechanics and
materialmen; real estate mortgages); MILI-
TIA (miscellaneous); POLICE AND SANI-
TARY REGULATIONS; POSSESSORY AC-
TIONS (ejectment); PRIVATE CORPORA-
TIONS (building and loan associations; in-
surance companies); STATE LANDS (ap-
praisement; leasing; leasing oyster lands).****Limitation of Actions—See CIVIL PRO-
CEDURE.****Lincoln County—See JUDICIAL DEPART-
MENT (superior courts).****Lis Pendens—See CIVIL PROCEDURE
(commencing actions).****Little Spokane River Hatchery—See
FISHERIES (hatcheries).****Logs—See LIENS AND ENFORCEMENT
OF LIENS (laborers on logs and timber);
PRIVATE CORPORATIONS (boom com-
panies); POLICE AND SANITARY REGU-
LATIONS (lumbering).****Loggers' Liens—See LIENS AND EN-
FORCEMENT OF LIENS.****Logging Roads—See HIGHWAYS (private
ways of necessity for logging).****Lottery Tickets, Sale of—See CRIMES
AND PUNISHMENTS (offenses against pub-
lic morals and decency).****Lumber—See LIENS AND ENFORCE-
MENT OF LIENS (laborers on logs and
timber); POLICE AND SANITARY REGU-
LATIONS (lumbering).**

Page!

Lumbering—See POLICE AND SANITARY REGULATIONS.

Malicious Mischief—See CRIMES AND PUNISHMENTS.

Malicious Trespass—See POSSESSORY ACTIONS (forcible entry and detainer); WASTE, TRESPASS AND NUISANCE.

Mandamus—See SPECIAL PROCEEDINGS.

Mandate—See APPEAL (reversal).

Marks and Brands—See POLICE AND SANITARY REGULATIONS (dairy products; lumbering).

Marriage—See DIVORCE AND ALIMONY.

Married Women—See DOMESTIC RELATIONS; RIGHTS OF PROPERTY (deeds and other instruments affecting land).

Mason County—See JUDICIAL DEPARTMENT (superior courts).

Mayor—See CITIES AND TOWNS; CITIES OF FIRST CLASS; CITIES OF THIRD CLASS; CITIES OF FOURTH CLASS.

Mechanics' Liens—LIENS AND ENFORCEMENT OF LIENS.

Medical Examining Board—See POLICE AND SANITARY REGULATIONS (practice of medicine).

Medicine, Practice of—See POLICE AND SANITARY REGULATIONS.

Merchandise—See POLICE AND SANITARY REGULATIONS (sales of stocks of).

Methow River Hatchery—See FISHERIES (hatcheries).

Military Code—See MILITIA.

MILITIA.

Companies—Admission—Enlistment:
enlistments, qualifications for, § 1964 156
enlistments, term of, § 1964 156
new companies, organization of, §
1963 155
new companies, admission of, § 1963.. 155

Courts—Martial—Procedure:
courts, kinds and organization of, §
2025 160
courts, military for enlisted men, §
2028 160
offenses of enlisted men, § 2046..... 161

Insurrection—Invasion—Breach of Peace:
commander-in-chief, powers of, § 2010. 159

Medical Department:
organization of, § 1939 151

Military Duties:
condemned supplies, funds from sale
of, § 2003d..... 159
meetings, drill and instruction, § 2000 159
target practice, § 2000a..... 159

Miscellaneous:
armories, bonds for, denominations, in-

MILITIA—Continued.

terest, § 2070 163
architects, compensation, § 2070 ... 165
bonds for; sale of, § 2070..... 163
commander to establish rules for, §
2070 167
commissioners not to be interested
in contract for construction of, §
2070..... 164
coupons to be deemed warrants, §
2070 164
contracts for construction of, § 2070 165
debt for construction of, § 2070.... 162
disbursements for, § 2070..... 166
funds for, designation of, § 2070.... 166
limitation of debt for, § 2070..... 162
payment of bonds, § 2070..... 163
revenue, levy for, § 2068..... 161
Seattle, § 2070 162
sites for, § 2070..... 165
sinking fund, § 2070 163
Spokane, § 2070..... 162
Tacoma, § 2070..... 162
sites, limitation of cost, § 2070.... 165
attorney general counsel for board, §
2070 166
prizes for rifle practice, § 2061 161

Officers—Election—Appointment—Qualification—Duties:

adjutant general, § 1954..... 153
adjutant general, duties of, § 1950.... 152
commissions in, examining board, §
1953..... 152
commissions in, regulations for, § 1953 152
field officers of regiments, § 1954..... 153
noncommissioned officers, § 1955..... 154
officers, how chosen, § 1954..... 153
officers lower than major, § 1954..... 154
vacancies in offices, how filled, § 1954 154

Organization:

allotments and stations, § 1926..... 150
bands, organization of, § 1933..... 151
brigade organization, § 1929..... 150
companies, number of, § 1926..... 150
members, number of, § 1926..... 150
officers of troop, company battery, §
1932 151
regiment, shall consist of, § 1930..... 151
signal corps, organization of, § 1934.. 151

Pay and Allowances:

auditors, board of, § 1990..... 157
allowance to company commanders, §
1991 157
allowances to officers of regiment
and brigade, § 1992..... 158
per diem, allowances, § 1993..... 158
subsistence and transportation, § 1993 158

Resignations—Discharges:

discharge of members, § 1975..... 156

Uniform and Equipments:

allowances to companies of arms and
equipments, § 1981..... 157
money for uniform and equipment, §
1981 157
penalties for unlawful use of equip-
ment, § 1981 157

Milk—See POLICE AND SANITARY REGULATIONS (dairy products).

Mineral Deposits—See MINES AND MINING; STATE LANDS (leasing mineral lands).

Mineral Lands—See MINES AND MINING; STATE LANDS (leasing mineral lands).

Mining Bureau—See MINES AND MINING.

MINES AND MINING.

Page

State Geological Survey:
 amended certificate of location, § 3151a 358
 assessments—record of proof prima facie evidence, § 3151a..... 358
 assessment work, § 3154 360
 assessment work, proof of, § 3151a... 358
 coal mines, duty to timber, § 3178.... 360
 cut or tunnel in lieu of shaft, § 3151a. 358
 definitions of terms, § 3151a 358
 discovery shaft—boundaries, § 3151a. 357
 distribution of materials collected, § 3147 357
 location and notice, § 3151a..... 357
 location of placer claim, how made, § 3151a 359
 meeting of board, § 3148 357
 mining districts, powers to make rules and regulations, § 3151a 360
 powers of board, § 3149 357
 record of proof of labor on prima facie evidence of labor performed, § 3151a 359
 relocation, how made, § 3151a 358
 report of, § 3146 356
 road building in lieu of assessment work, § 3151a 360
 shafts, limitation of rule as to, § 3151a 359
 survey established, 3145 356
 ventilation of mines, § 3165..... 360

Mining Claims—See MINES AND MINING.

Minor—See POLICE AND SANITARY REGULATIONS (sale of cigarettes); PROBATE LAW AND PROCEDURE (orphans and abandoned minors; guardianship of infants).

Month—See EDUCATION (district schools).

Mortgage—Chattel—See LIENS AND ENFORCEMENT OF LIENS (chattel mortgage); RIGHTS OF PROPERTY.

Mortgage of Real Estate—See LIENS AND ENFORCEMENT OF LIENS; RIGHTS OF PROPERTY; ENFORCEMENT OF JUDGMENTS (sale of property on execution). *Foreclosure* p. 581.

Motion—See APPEAL TO SUPREME COURT; CIVIL PROCEDURE (commencing actions).

Municipal Corporation—See ACTIONS AGAINST PUBLIC CORPORATIONS; CITIES AND TOWNS; CITIES OF FIRST CLASS; CITIES OF THIRD CLASS; CITIES OF FOURTH CLASS; COUNTIES.

Municipal Courts—See CITIES OF FIRST CLASS.

Murder—See CRIMES AND PUNISHMENTS (offenses against the person); CRIMINAL PROCEDURE.

National Guard—See MILITIA.

Navigation—See SHIPPING.

Navigable Streams—See IMPROVEMENT OF NAVIGABLE RIVERS.

Negligence—See CITIES OF FIRST CLASS; DOMESTIC ANIMALS (sheep); EDUCATION (district schools; penalties); EMPLOYEES (protection for); FIRES, PERMITTING TO SPREAD.

Negotiable Instrument—BILLS OF EXCHANGE AND PROMISSORY NOTES; TRADE AND COMMERCE (bills of lading; warehouse receipts).

Newspaper—See CITIES OF FOURTH CLASS (official paper).

New Trial—See ISSUES, TRIAL AND JUDGMENT.

New Whatcom—See STATE LANDS (tide lands).

New Whatcom Tide Lands—See STATE LANDS.

Nickel-in-the-slot Machines—See CRIMES AND PUNISHMENTS (Offenses against public morals and decency).

Nisqually River Hatchery—See FISHERIES (hatcheries).

Nooksack River Hatchery—See FISHERIES (hatcheries).

Nominations—See ELECTIONS.

Normal Schools—See EDUCATION.

Notaries Public—See SALARIES, FEES, etc.

Notice—See APPEALS TO SUPREME COURT; BILLS OF EXCHANGE AND PROMISSORY NOTES; CITIES AND TOWNS (bonds for local improvements; consolidation of; plats, additions and streets; renewal of sidewalks); CITIES OF FIRST CLASS (drainage and sewerage); CIVIL PROCEDURE (commencing actions); DRAINAGE DISTRICTS (payment of warrants issued under act of 1895); EDUCATION (city of boards of; district schools; sites for schoolhouses); ELECTIONS (pollbooks; registration); ENFORCEMENT OF JUDGMENTS (redemption; sale on execution); FINANCE (funding bonds); HIGHWAYS (laying out and opening; private ways of necessity); IMPROVEMENT OF NAVIGABLE RIVERS; ISSUES, TRIAL AND JUDGMENT (new trials; trials of civil actions); MINES AND MINING; OFFICERS (surety companies); PRIVATE CORPORATIONS (building and loan associations); PROBATE LAW AND PROCEDURE (claims against estates; distribution of

estates; guardianship of idiots and insane; letters testamentary and of administration; support of families; exemptions): PROTECTION TO SURETIES; PROVISIONAL REMEDIES (injunction); REVENUE AND TAXATION (personal property tax; delinquency certificates); RIGHTS OF PROPERTY (deeds and other instruments; leases); SPECIAL PROCEEDINGS (certiorari); STATE LANDS (appraisal and sale; tide and shore lands; aberdeen tide lands; tide and shore lands; classification; hoquiam tide lands; tide lands, second class).

Notice to Quit—See RIGHTS OF PROPERTY (leases).

Nuisances—See CITIES AND TOWNS (water and lighting plants); POLICE AND SANITARY REGULATIONS.

Oath—See DIKING DISTRICTS (commissioners).

Obstructing Highway—See CRIMES AND PUNISHMENTS (public health, etc.).

Ocean Shore and Beach—See HIGHWAYS (laying out and opening).

OFFICERS.

Bonds Official:	
continuation, § 1518	99
defective execution of, § 1520.....	99
justification of sureties, § 1527.....	99
premiums on bonds allowed to principal, when, § 1535	104
release of surety how secured, § 1534	101
surety companies as surety on, § 1534	99
applicable to bonds and other obligations given under laws of United States, § 1534	100
certificate of authorization § 1534	101
company estopped to deny its authority, § 1534	101
deemed insurance companies, § 1534..	103
expiration of authority, § 1534.....	102
failure to pay judgments, penalty, § 1534	103
fees to state for authorization, § 1534	102
insurance commissioner, duties of respecting same, § 1534	101
notice of revocation, § 1534.....	103
penalty for violations of law, § 1534..	102
premiums paid allowed to officer, § 1534	100
pre-requisites to authorization, § 1534	101
revocation of license, § 1534.....	103
service of process, agent for, § 1534..	102
qualifications of company, § 1534.....	100
unlawful to become surety without certificate of authority, § 1534	101

Okanogan County—See JUDICIAL DEPARTMENT (superior courts).

Omitted Land—See DRAINAGE DISTRICTS.

Orphans and Abandoned Minors—See PROBATE LAW AND PROCEDURE.

Oysters—See FISHERIES.

Oyster Lands—See STATE LANDS.

Pardon—See EXECUTIVE DEPARTMENT.

Parties to Actions—See CIVIL PROCEDURE.

Paved Roads—See HIGHWAYS.

Peddler—See POLICE AND SANITARY REGULATIONS (hawkers and peddlers).

Penal Institutions—See BENEVOLENT, REFORMATORY AND PENAL INSTITUTIONS.

Penalty—See CITIES AND TOWNS (public health); CRIMES AND PUNISHMENTS (game laws; game birds); DRAINAGE DISTRICTS (organization); EDUCATION (district schools; free libraries; general provisions); EMPLOYEES (protection of); FIRES, PERMITTING TO SPREAD; FISHERIES (catching and selling fish; hatcheries; oysters); HORTICULTURE; MILITIA (uniforms and equipments); OFFICERS (official bonds); POLICE AND SANITARY REGULATIONS (bakeshops; barbering; cemeteries; commercial fertilizers; county boards of health; dairy products; dentistry; fraternal beneficiary associations; inspection and sale of liquors; lumbering; medicine practice of; nuisances; sales of stocks of merchandise; spraying compounds; state fruit commission); PRIVATE CORPORATIONS (foreign corporations; trust companies); REVENUE AND TAXATION (delinquency certificates); STATE LANDS (leasing school and granted lands; tide and shore lands, first class).

Penitentiary—See BENEVOLENT, REFORMATORY AND PENAL INSTITUTIONS.

Personal Property—See LIENS AND ENFORCEMENT OF LIENS; REVENUE AND TAXATION (personal property tax); RIGHTS OF PROPERTY.

Pharmacy—See POLICE AND SANITARY REGULATIONS.

Pilots—See SHIPPING.

Plats—See CITIES AND TOWNS (plats, additions and streets).

Pleadings—See CIVIL PROCEDURE.

Pleas—See CRIMINAL PROCEDURE.

Plumbers—See CITIES AND TOWNS (public health).

Police Court—See CITIES OF FIRST CLASS (municipal courts).

POLICE AND SANITARY REGULATIONS.

Bakeshops:	
buildings and rooms, dimensions, arrangement, § 2865k	317
certificate of compliance from commissioner, § 2865k	317
employees, not to be under 16 years of age, § 2865k	318

POLICE AND SANITARY REGULATIONS

—Continued.

employees, not to infected with di-	Page
sease, § 2865k	318
penalties for violations of rules, §	
§ 2865k	318
renovation—notice, § 2865k	318

Barbering, Practice of:

apprentices, § 3020b.....	331
barbering defined, § 3020b	330
board of examiners, appointment of, §	
3020b	330
compensation, § 3020b	330
organization, § 3020b	330
reports, § 3020b	330
examinations of applicants, § 3020b..	330
penalties for violations of act, § 3020b	332
powers of board, § 3020b.....	331
registration of applicants, § 3020b....	331
register of barbers, § 3020b.....	331
reports by barbers, § 3020b.....	330
treasurer's bond, § 3020b.....	330
unlawful to, without registration, §	
3020b	329

Cemeteries:

associations for maintaining, § 3077a.	345
burial lots exempt from tax, § 3077a.	346
dedication of, how made, § 3077b....	347
lands for exempt from taxation, §	
3077b.....	347
grounds to be platted and recorded, §	
3077a.....	347
penalties for injuring, destroying, etc.,	
§ 3077a.....	347
powers of associations, § 3077a.....	345
who may reserve land for, § 3077b....	347

Commercial Fertilizers:

analysis fee, § 3101.....	348
chemist at experiment station to take	
samples not exceeding two pounds,	
§ 3101.....	347
chemist of agricultural college duties	
of respecting fertilizers, § 3101.....	349
expenses in administration of act, §	
3101.....	350
fertilizers, definition of, § 3101.....	350
label stating composition of, § 3101..	348
leather fertilized, display of fact, §	
3101.....	348
penalties for violation of act, § 3101..	349
statement of analysis to state chemist	
with sample, § 3101.....	348

County Boards of Health:

county commissioners to be, § 2970...	325
county health officer, appointment of, §	
2970.....	325
county sanitary officers, appointment,	
§ 2970.....	325
dangerous diseases defined, § 2970....	326
duties of board, § 2970.....	326
expenses, of administration of act, §	
2970.....	327
health officers, duties of, § 2970.....	326
penalties for violations of act, § 2970.	327
pesthouses, taking private property	
for—compensation, § 2983.....	327
physicians, duties of, § 2970.....	326

POLICE AND SANITARY REGULATIONS

—Continued.

Dairy Products:

bond of commissioner, § 2849.....	Page
308	
brands—penalties for unlawful use, §	
2865e	312
cheese—brands furnished by commis-	
sioner—penalties respecting, § 2844	306
cheese, impure—unlawful to make, sell	
or possess, § 2846	307
cheese, ingredients of pure, § 2847..	308
commissioner and deputies, powers, §	
2852a	309
commissioner, duties of, § 2851.....	308
counsel for commissioner—attorney	
general, § 2858	309
deputies, commissioner may appoint, §	
2850	308
finer, appropriation of, § 2863	310
impure milk—penalty for selling, §	
2865	310
information respecting violations. pen-	
alty for neglect or refusal to give,	
§ 2864	310
license fees to be deposited, § 2865c..	311
license to carry or peddle milk, §	
2865a	310
milk cans—measurement—sealing, §	
2865g	313
milk cans unsealed—penalty for use	
of, § 2865h	313
milk—impure—adulterated, sale of, §	
2842	305
penalties for violations of act, § 2855	309
possession of prohibited article prima	
facie evidence of offense, § 2865d..	312
process butter—possession or sale	
without label prohibited, § 2865f..	312
“process butter”—prohibition and	
punishment for sale of, constitution-	
ality of law, § 2865.....	313
prosecutions—evidence, § 2843.....	306
renovated butter, seizure of, § 2842..	305
reports of dairymen—blanks for, §	
2844a	307
skimmed milk—penalty for selling	
without label, § 2865b.....	311
State Board Dairy Commissioners, §	
2859	309
appropriation for, § 2862a.....	310
expenses of commission, § 2862....	310
no compensation, § 2860.....	309
salary and expenses, § 2857.....	309
reports of, § 2861.....	310
State Chemist to analyze dairy prod-	
ucts, § 2852.....	308
State Dairy Commissioner, appointment	
of, § 2848	308

Dentistry, Practice of:

examinations—fees—eligibility, § 3025	332
penalty for practicing without license,	
§ 3029	333
practicing dentistry defined, § 3032...	334
registration—posting names, § 3027..	333

Eyeglasses and Spectacles:

license, county auditor to issue, §	
3049c	343

POLICE AND SANTARY REGULATIONS

—Continued.

license, penalties for selling without, <i>Page</i>	
§ 3049c	343
license, unlawful to sell without, §	
3049c	343
Fraternal Beneficiary Association:	
agents for—employment of—restric-	
tions on, § 2841d	301
benefits exempt from levy, § 2841d...	301
certificate of organization, filing, §	
2841d	300
existing companies may continue busi-	
ness—conditions, § 2841d	297
foreign companies—authority for, §	
2841d	298
annual certificate of parent state,	
§ 2841d.....	298
insurance commissioner may investi-	
gate, § 2841d	299
meetings of company, § 2841d.....	302
mortality tables for, § 2841d.....	301
orders exempted from provisions, §	
2841d	303
organization of, § 2841d.....	297
penalties, § 2841d	302
permits to do business, § 2841d.....	300
premiums—payment for beneficiary	
prohibited, § 2841d	301
reports of association, § 2841d.....	298
service of process on—provisions re-	
specting, § 2841d	300
Fruit Boxes:	
standard size established, § 2909a...	320
Hawkers and Peddlers:	
honorably discharged soldiers ex-	
empted from provisions of act, §	
2867	319
license, § 2867.....	318
license issued by county auditors, §	
2867	319
penalties for violations of act, § 2867	319
soldiers, proof of, right to exemption,	
§ 2867	319
Horseshoeing:	
board of examiners provided—fees of,	
§ 3049b	342
certificates, fraudulent—punishment	
for use of, § 3049b.....	342
register of shoers, city clerk, § 3049b	342
registration of shoers—who eligible—	
how registered, § 3049b	341
registration—unlawful to shoe horses	
without, § 3049b	341
repealing clause, § 3049b	343
Inspection and Sale of Liquors—Li-	
cense:	
cities may grant licenses to sell, § 2934	320
custody of liquors seized—seizures of	
liquors kept for unlawful purposes,	
§ 2944a	321
definition of terms, § 2927	320
license to sell liquor, limitations as to	
place, § 2933a	320
liquors, keeping for unlawful use, §	
2944a	321

POLICE AND SANTARY REGULATIONS

—Continued.

nuisance, place where liquors are kept	<i>Page</i>
for unlawful use is common, § 2944a	321
penalties for selling at prohibited	
places, § 2933a.....	320
saloon-keepers—lessors of premises no	
contribution between, § 2947.....	322
unlawful keeping of liquors, payment	
of revenue tax, prima facie evidence	
of, § 2944a	321
unlawful keeping of liquors, penalties	
for, § 2944a	321
Inspection of Petroleum Oils:	
appropriation for enforcement of, §	
2948	323
commissioner, duties of, § 2948.....	323
commissioner for inspection, etc., §	
2948	322
expenses of administration of act, §	
2948	323
inspection—labeling—quality, § 2948.	322
unlawful sales of, defined, § 2948.....	322
unlawful sales, penalties for, § 2948...	322
Insurance Companies:	
accepting insurance from unlicensed	
company—penalty on insured, §	
2841e	305
agents must be resident, § 2841e..	304
agents, when licensed, § 2841e.....	305
agents, who deemed to be, § 2841e...	305
authority to do business, § 2808....	291
agent or broker, defined, § 2817a....	293
agent's license, § 2817a.....	293
agents—penalties for acting without	
license, § 2817a.....	292
annual tax, § 2837.....	294
deposit of securities, § 2819.....	293
deputy insurance commissioner, §	
2835	294
face of policy to be paid, § 2833.....	293
fees for license, § 2835a.....	294
license, revocation of—increased fee, §	
2841e	304
license to agents—when issued, § 2841e	304
license to company, condition of, §	
2841e	304
marine—agents, § 2817a....	292
mutual fire companies—assessments,	
limitation of, § 2841c	295
annual meetings—votes at, § 2841c.	296
expenses, § 2841c.....	295
fees, § 2841c.....	297
insolvency, § 2841c.....	296
law governing, § 2841c.....	295
limit of risks, § 2841c.....	295
mode of organization, § 2841c.....	296
organization of, § 2841c.....	295
reports, § 2841c.....	296
when may issue policies, § 2841c....	295
withdrawals, § 2841c.....	296
overhead writing prohibited, § 2849..	294
policy without license, when valid, §	
2841e	305
Inspection and Weighing Grain:	
limitation of application of act, §	
2878	319

POLICE AND SANITARY REGULATIONS

—Continued.

Lumbering:

carloads of lumber to be weighed, § 3118a	351
logs taken adrift—penalty for manufacturing branded logs, § 3135....	352
logs taken adrift—rights of owner, § 3135	352
penalty for violations of act, § 3135.	352
purchase of logs taken adrift, § 3135.	352
taking up and sale of logs adrift, § 3135	352

Medicine, Practice of:

license—examination of applicants, § 3014	327
to be recorded, § 3018	328
penalties for practicing without, § 3019	329

Nuisances:

private person may enjoin public nuisance, when, § 3093	347
---	-----

Pharmacy, Practice of:

apprentices reported to board, § 3036	335
annual fees of pharmacists, § 3041....	336
board of examiners—compensation how paid, § 3042	337
how elected and appointed—terms of office, § 3037....	335
organization, § 3038....	336
drugs, qualities of—responsibility of proprietors, § 3044	338
examination—fees for, § 3040	337
itinerant vendors—license—fees, § 3046	339
license, who eligible to, § 3035	334
license, unlawful to practice without, § 3034	334
penalties for violations of act, § 3043	338
penalties—suits for—how prosecuted, § 3047	340
poisons—register of sale of, § 3045..	339
repealing clause, § 3048	340
registration of pharmacists—who eligible, § 3039....	336
secretary of board—salary of, § 3042.	337

Sale of Cigarettes:

penalties for unlawful sale, § 2955a..	323
unlawful to sell to minors, § 2955a...	323

Sales of Stocks of Merchandise:

duty of purchaser, § 3102	350
liability of purchaser, § 3102....	350
penalties for violations of act, § 3102	351
sales in bulk, definition of, § 3102....	351

Spraying Compounds, Sale of:

adulterated materials—definition, § 3049a	340
analysis by chemist of agriculture college, § 3049a	341
enforcement of law, by whom, § 3049a	341
penalties for violations of act, § 3049a	340
sales of adulterated materials unlawful, § 3049a	340

POLICE AND SANITARY REGULATIONS

—Continued.

State Board of Health:

powers and duties of, § 2957.....	324
secretary, salary of, § 2965	325

State Fire Marshal:

deputies, appropriation for, § 2860a..	291
deputies, ex-officio, § 2806a.....	289
deputies, salaries of, § 2806a.....	291
duties of, § 2806a	290
creation of office, § 2806a	289
penalties for neglect of duties enjoined by act, § 2806a	291
powers of, § 2806a	290
reports of, § 2806a	291

State Food Commission:

adulterated food defined, § 2865i....	314
adulterated food—sale unlawful, § 2865i	313
chemist of college to analyze, § 2865i	316
commissioner of—dairy commissioner ex-officio food commissioner, § 2865i	315
commissioner, powers of, § 2865i..	316
counsel for commissioner—attorney general to act as on request, § 2865i	316
expenses of commission—auditing and payment, § 2865i.....	317
“food” defined, § 2865i.....	313
guaranty of purity as defense to charge of sale, § 2865i	314
penalties for violating provisions, § 2865i.....	316
possession of impure food, prima facie evidence of unlawful intent—seizure by commissioner, § 2865i.....	315
reports of commissioner—publication, § 2865i	317
sample of food for analysis, § 2865i..	315
state dairy commission, ex-officio food commission, official designation, § 2865i	316

State Veterinary Surgeon:

chosen, how, § 3050	343
diseases of animals—duties of practicing veterinary surgeons respecting, § 3050	344
duties and powers, § 3051	344
infected stock, destruction of, § 3054	345
qualifications of, § 3050	344
quarantine, definition of, § 3050	344
salary and expenses, § 3050.....	344

Poll-book—See ELECTIONS.**Poll Tax—See HIGHWAYS** (funds and labor).**POSSESSORY ACTIONS AND QUIETING TITLE.****Forcible Entry and Detainer.**

abstract of title furnished not evidence in, § 5550	602
bond for writ of restitution, additional, § 5536.....	601
complaint, right of possession, § 5532..	601
complaint in—summons, § 5532	600

POSSESSORY ACTIONS AND QUIETING**TITLE—Continued.**

counterclaim for wrongful issue of writ of restitution not permitted in, § 5542	601
defense of severable contract not allowed, § 5542	601
definition of unlawful detainer, § 5527	600
description of premises in complaint, § 5550	602
double damages in, when allowed, § 5542	602
judgment in forcible detainer, § 5542..	601
proof required of plaintiff, § 5540....	601
supersedeas, when allowed, §§ 5546, 5548.....	602
tenant of agricultural lands, § 5528..	600
verdict in forcible detainer, § 5542....	601
writ of restitution, bond to stay, § 5535	601
writ of restitution, constitutional, § 5534	601
wrongful possession must be alleged, § 5550	602

Ejectment:

pleading by plaintiff, § 5508.....	598
damages, improvements as setoff to, § 5511	598
defendant must plead title, character and duration of, § 5509	598
improvements, nature of judgment in claim for, § 5511a	599
improvements, what claimant for shall set forth—trial of claim, § 5511a..	599
improvements, who entitled to make claim for in, § 5511a.....	598
limitations of, § 5501.....	598
mortgagee cannot maintain action of, § 5516	599
superior title prevails in, § 5508.....	598

Quieting Title:

actions for—when possession necessary to maintain, § 5521.....	559
remove lien of street assessment, § 5521.....	600
trustee may maintain, § 5521.....	600
who may maintain, § 5500.....	597

Power of Attorney—See RIGHTS OF PROPERTY (deeds and other instruments affecting lands).

Precincts—See COUNTIES (Ferry county; Chelan county).

Printing—See EXECUTIVE DEPARTMENT (state board of printing).

PRIVATE CORPORATIONS.**Boom Companies:**

eminent domain respecting tide lands, § 4378.....	503
Ilwaco Railway Company, granted right to construct and maintain booms, § 4394a.....	504
prior right to purchase submerged land given to Ilwaco Railway Company, § 4394a.....	505

SUPP WASH. CODE—49

PRIVATE CORPORATIONS—Continued.

regulation of use of submerged lands by Ilwaco Railway Company, § 4394a.....	505
submerged lands may be used by it, § 4394a.....	505
tolls and liens of, § 4391.....	504
waterways, highways, § 4386.....	503
waterways, highways—rights of adjacent owners, § 4391.....	504
Building and Loan Associations:	
authorized, § 4395.....	505
annual meetings, notice of to be mailed to members, § 4433.....	507
deposits of securities by, with state auditor, § 4400.....	507
expense fund, limitations on, § 4425..	507
securities deposit of with state auditor, § 4400.....	506
securities deposited by, a trust fund, § 4400.....	507
securities of, § 4398.....	506
usury, premiums not interest, § 4419..	507
securities taken prior to act, not applicable to, § 4400.....	507

Foreign Corporations:

penalties for violations of statutes, § 4293a.....	498
--	-----

Fraternal Orders:

incorporation of, § 4465.....	516
reincorporation of orders, § 4465a....	517

Insurance Companies—Mutual, Fire and Marine:

assessments, § 4466g....	520
examinations—revocations of license, § 4466e.....	519
existing companies, privileges of, § 4466h.....	520
fees to commissioner of insurance, § 4466f.....	520
incorporation of authorized, § 4466..	517
insolvency, violation of law, § 4466e..	519
meetings of, annual, § 4466c.....	518
membership—voting qualifications, § 4464c.....	516
membership—withdrawals, § 4466b...	518
organization of, § 4464.....	515
policies, limited in amount, § 4464a..	515
policies—limitation of amount, § 4466a	518
president and secretary, duties of § 4466d.....	519
surplus, how disposed of, § 4464b....	515
trustees, election of, § 4464d.....	516

Mining Companies:

foreign corporations —, penalties, § 4293a.....	498
license, year defined, § 4289.....	
rights of stockholders in, § 4280a....	497

Organization and Management:

banking corporations, stockholder's liability for debts, application of proceeds from, § 4266.....	496
board of trustees, vacancies, de facto trustees, § 4255.....	496
dissolution of, power of trustees, § 4274.....	497

PRIVATE CORPORATIONS—Continued.

eminent domain for water companies, § 4282a.....	498
appropriation of land, § 4282c.....	498
entry and survey for, § 4282b.....	498
fees for license, § 4289.....	498
franchise, sale of, § 4253.....	495
insolvent corporations, preference by mortgage, § 4253.....	495
mortgage, power to—limitations, § 4253.....	495
stock, increase and decrease of, § 4271.....	496
pledge and sale of, § 4262.....	496
pledge by delivery, § 4264.....	496
sale of under by-laws, § 4262.....	496
sale of, no by-laws for, § 4262.....	496
stockholders in mining companies, protection of, § 4280a.....	497
stock subscriptions before beginning business, § 4250.....	495
interest on, § 4262.....	496
Railway Companies:	
bicycles as baggage, § 4312a.....	499
eminent domain for, right of extended to railway and other corporations, for highway purposes, § 4334.....	502
excessive freight—replevin of goods, § 4325.....	499
damages by reason of failure to fence, § 4332a.....	500
failure to fence, prima facie evidence of negligence, § 4332.....	499
fencing track required, § 4332a.....	500
negligence, failure to fence is, § 4332a.....	500
right of way for over state lands, § 4333a.....	500
appeal from appraisalment of land commissioner in, § 4333a.....	501
classification and appraisalment of, § 4333a.....	500
damages to improvements on, § 4333a.....	501
future grants included, § 4333a.....	502
minimum price per acre, § 4333a.....	501
record of proceedings, § 4333a.....	501
rights given under act cumulative, § 4333a.....	502
Telegraph and Telephone Companies:	
highways, use of by, consent of cities, § 4369.....	503
Trust Companies:	
appointment of as trustee, etc.—oath, § 4463m.....	514
certificate of incorporation—publication, § 4463a.....	508
extension of corporate existence, § 4463p.....	514
fees to secretary of state, § 4463.....	514
indebtedness of officer, stockholder or employee to it, prohibited, § 4463d.....	511
inspection, supervision by Secretary of State, § 4463i.....	513
insolvency—actions against, receiver, § 4463k.....	513
loans on shares forbidden, § 4463g.....	512

PRIVATE CORPORATIONS—Continued.

management and control, by board of directors, § 4463c.....	510
minors, deposits by, § 4463h.....	512
organization of, § 4463q.....	508
penalties for misfeasance, § 4463f.....	512
powers of, generally, § 4463b.....	509
refusal to submit to examination—proceedings, § 4463l.....	513
reports of, penalties for failure to make, § 4463e.....	512
stockholder's liability for debts, § 4463n.....	514

Private Ditches—See DRAINAGE DISTRICTS.

Private Way—See HIGHWAYS (private ways of necessity for logging).

PROBATE LAW AND PROCEDURE.**Accounts of Administration—Payment of Debts:**

attorneys' fees not allowed, § 6314....	639
commissions on value of unsold land, how value determined, § 6314.....	639
commissions to administrator on value of lands not sold, § 6314.....	638
joint administration of estates, allowance in, § 6314.....	639
payment of claims by administrator, order of, § 6333.....	639

Claims Against Estates:

claims against estate, verification, § 6229.....	638
claims, presentation, before suit, § 6235.....	638
notice to creditors, when not required, § 6226.....	638
presentation of claims, time, limitation, § 6228.....	638

Distribution of Estates:

distribution, conditional decree, § 6355.....	639
effect of decree of, § 6357.....	639
of estate subject to liens of administrator, § 6355.....	639
partition without notice, void, § 6357.....	639

Guardianship of Infants:

powers of guardian over estate, § 6402.....	639
---	-----

Guardianship of Idiots and Insane:

claims against ward, compromise, § 6444.....	641
custodian of person, duty of, § 6424a.....	640
guardian, powers respecting suits, § 6432.....	641
nonresident person having property in state, § 6424a.....	640
petition for, notice of, § 6424a.....	640
prosecuting attorney, duty of, § 6424a.....	641
sales of estates of ward, § 6474.....	641
service of notice of, § 6424a.....	640

Inventory Custody of Effects:

assets of estate, estoppel of administratrix to deny by conduct, § 6209.....	637
--	-----

PROBATE LAW AND PROCEDURE—Continued.

inventory, penalty for failure to return, § 6208..... 637
jurisdiction and power of court in, § 6075..... 636

Letters Testamentary and Administration:

letters of administration, who entitled to, creditors, § 6141..... 636
nonintervention will, jurisdiction of superior court, § 6196..... 636
notice to creditors, § 6196..... 637
right of testator, § 6196..... 636
sale of land, § 6196..... 637
partnership estates, actions against, § 6189..... 636
partnership estates, surviving partner's right to letters, § 6190..... 636
special administrator, showing for, § 6172..... 636

Orphans and Abandoned Minors:

complaint of abandonment or neglect, § 6484..... 642
county commissioners power over, § 6484..... 643
expenses of court proceedings, § 6484.. 644
habeas corpus respecting, evidence, § 6484..... 644
minor convicted of crime, power of judge, § 6484..... 643
police, duty of respecting, § 6484.... 643
powers of benevolent societies, § 6484. 641
proceedings on complaint, § 6484..... 642
repeal of act of February 14, 1899, § 6484..... 644

Sales and Mortgages of Estates:

mortgage of lands of estate, § 6257.. 638

Support of Family—Exemptions:

allowance to widow, etc., notice, order, § 6220..... 638
exempt property for widow and children, § 6219..... 638
exempt property for widow and minors, § 6220..... 638
expenses of last sickness and funeral minor part of allowance, § 6220.... 638
homestead—effect of assignment of by court, § 6219..... 637

Venue:

foreign wills, probate, venue in, § 6087 636
probate of will, residence of testator, § 6087..... 636

Wills, Custody and Proof of:

contest of wills, attorney's fees in, § 6110..... 636

Prohibition—See SPECIAL PROCEEDINGS.

Promissory Notes—See BILLS OF EXCHANGE AND PROMISSORY NOTES.

Prosecuting Attorney—See COURTS; PROBATE LAW AND PROCEDURE (guardians for idiots and insane persons); CRIMES AND PUNISHMENTS (offenses not specially provided for).

Protection of American Flag—See CRIMES AND PUNISHMENTS (offenses not specially provided for).

PROTECTION TO SURETIES.

contribution, § 5710..... 610
notice to principal to sue, § 5705.... 610
trial of suretyship—absence of principal, § 5707..... 610

Protest—See BILLS OF EXCHANGE AND PROMISSORY NOTES.

PROVISIONAL REMEDIES.**Attachments:**

action on bond in, § 5357..... 592
affidavit for—grounds for, § 5351.... 590
attorney's fee in suit on bond, § 5357. 592
bond for, § 5355..... 591
discharge of, on motion, § 5376..... 592
equitable actions, § 5350..... 590
for debt secured by mortgage—waiver of lien, § 5351..... 591
liberal construction of provisions for—amendments, § 5380..... 592
motions to discharge procedure, § 5377. 592
of money in officer's hands, § 5367... 592
when debt not due, § 5352..... 591
writs to different counties, § 5359.... 592
writs, mode of executing, § 5362.... 592

Claim and Delivery:

exceptions to sureties on plaintiff's bond for delivery, § 5423..... 595
possession of defendant necessary to sustain case, § 5418..... 595

Deposits in Court:

does not apply to custody of officer, § 5460..... 597

Garnishments:

dating and testing, § 5396..... 593
decree to deliver effects of defendant, § 5404..... 594
defense by garnishee of defendant's interest, § 5400..... 594
effect of service of writ, § 5398..... 593
exemption of wages from, § 5412..... 594
motion to quash, § 5390..... 592
property under lease not subject to, § 5390..... 593
release of, by bond, § 5398½..... 594
served by whom, § 5390..... 593
service of writ of, § 5397..... 593
service of writ—waiver of service, § 5390..... 593
traverse of answer by affidavit, § 5409. 594
venue of action in, § 5390..... 593
what is subject to, § 5390..... 593

Injunction:

against malicious erection of structures, § 5433..... 595
notice of application for—emergency, § 5435..... 596
when granted, § 5432..... 595
who bound by order of, § 5442..... 596

Receivers:

appointment pendente lite—discretion of court in, § 5456..... 596
corporations—estoppel of stockholders, § 5446..... 596

PROVISIONAL REMEDIES—Continued.

insolvent corporations, § 5456..... 597
 mortgage foreclosures in, § 5446..... 596
 real actions, § 5456..... 596

Public Buildings—See STATE CAPITOL BUILDING.

Public Health—See CITIES AND TOWNS.

Public Lands—See STATE LANDS.

Public Libraries—See EDUCATION (free libraries; state library commission).

Public Schools—See EDUCATION.

Public Works—See LABORERS ON PUBLIC WORKS.

Puyallup Experiment Station—See EDUCATION (state university).

Quail—See GAME LAW.

Quarantine—See DOMESTIC ANIMALS.

Quarantine Violations—See CRIMES AND PUNISHMENTS (public health, etc.)

Quieting Title—See POSSESSORY ACTIONS, etc.

Quo Warranto—See SPECIAL PROCEEDINGS.

Railroad Company—See PRIVATE CORPORATIONS.

Rape—See CRIMES AND PUNISHMENTS (offenses against the person).

Real Estate Mortgages—See LIENS AND ENFORCEMENT OF LIENS; RIGHTS OF PROPERTY (assignment and satisfaction of; deeds and other instruments, etc.).

Receiver—See SPECIAL PROCEEDINGS (contempts; provisional remedies).

Records—See APPEAL.

Redemption—See ENFORCEMENT OF JUDGMENTS (sales on execution); REVENUE AND TAXATION.

Reform School—See BENEVOLENT, REFORMATORY AND PENAL INSTITUTIONS.

Refunding Bonds—See EDUCATION (bonds of school districts); FINANCE (funding municipal indebtedness)

Registration—See ELECTION.

Remittitur—See APPEAL TO SUPREME COURT.

Removal from Office—See EXECUTIVE DEPARTMENT (powers of governor).

Repeals of Criminal Statutes, Saving Clause—See CRIMES AND PUNISHMENTS (offenses not specially provided for).

Replevin—See PROVISIONAL REMEDIES (claim and delivery).

Reply—See CIVIL PROCEDURE (pleadings).

Representative Districts—See LEGISLATIVE.

Returns—See ELECTION.

REVENUE AND TAXATION.

Cities of Less than 20,000 Inhabitants:
 funds, expense and indebtedness, § 1790.. 147

Collection of Taxes:

annual report of county treasurer to county auditor, § 1733..... 132

annual report of county treasurer, duty of auditor thereon, § 1733.... 132

auditor of county, report to state treasurer, § 1732.... 132

county treasurer, ex-officio collector of city tax, § 1781.... 147

county treasurer, collector of all taxes, 1724.... 129

lienholders may pay taxes on lands and have additional lien for, § 1739.... 132

lien on lands attaches, when, § 1740.. 133

payments on undivided interests, § 1739.... 133

Personal Property Tax:

collected by distraint, when, § 1727.. 131

distraint for, § 1727..... 130

lien for, § 1727..... 130

notice to pay, § 1727..... 130

notice of sale of distrained property, § 1727.... 131

uncollected, reported to county auditor, § 1728.... 131

Real Estate Tax:

delinquent, when, § 7724..... 130

due, when, § 1734..... 130

interest on, after due, § 1724..... 130

rebate on, § 1724.... 130

segregation of joint interests for payment, § 1739.... 133

segregation, commissioners to determine controversies, § 1739..... 133

segregation, notice of to owners of interests, § 1739..... 133

remission of taxes and penalties, § 1659b.... 122

removal of taxpayer from county, certification to other county, § 1661a.. 122

removal of taxpayer to other county, collection on transcript, § 1661a.. 123

removal of taxpayer to other county, nature of transcript, § 1661a..... 123

transient vendors of merchandise, § 1740a..... 134

Delinquency Certificates:

assignable, certificates issued to county are, § 1772d.... 146

assignment by county, effect of, § 1772e..... 146

compromise of taxes, delinquent, § 1774.... 147

fees respecting, § 1772.. 145

foreclosure of amendments in, § 1756. 139

appeal in, § 1757.... 141

appeal bond in, § 1757..... 141

by county, § 1751a.... 137

city may purchase at sale in, § 1760. 144

REVENUE AND TAXATION—Continued.

deed in, § 1757.....	142
deeds in, prima facie evidence of, § 1767.....	144
errors in proceedings not to defeat title by, § 1756.....	139
forms for use in, § 1751½.....	136
judgment of foreclosure, § 1756.....	138
judgment to be several as to each tract, § 1756.....	139
judgment on appeal, § 1757.....	141
notice of, § 1751.....	135
order of sale in, § 1756.....	139
sales, notice, how made, § 1756.....	139
service of notice of, § 1751.....	136
summons in and service of, § 1751..	136
forfeiture of land to county, § 1756..	141
issue, when may, form of, § 1751.....	134
interpretation of provision of remission of taxes and penalties, § 1771.....	145
jurisdiction defects not cured, § 1756..	141
land bought by county, disposed of how. § 1772c.....	145
land deeded to county, stricken from tax-roll, § 1772a	145
penalties included in, § 1749.....	135
procedure as to taxes prior to 1898, § 1769.....	144
remission of taxes, § 1774.....	146
segregation of property for purpose of issuing, § 1749	135
subsequent taxes, county not liable for, § 1772b.....	145
validity of, as to prior taxes, § 1749..	135

Inheritance Tax:

appraisalment. extension of time for filing, § 1655a.....	118
compromise of tax, by whom, when, § 1655a..	118
constitutional, § 1655a.....	119
copies of reports of executors, administrators, to treasurer of state, § 1655.....	119
devises to executors and administrators in lieu of fees, § 1655a.....	117
duties of appraisers in estates, § 1655a..	117
foreign executors, administrators, trustees, duties of, § 1655.....	118
estates for life and years, other than fathers or mothers, § 1655a.....	116
estates for lives and years, subject to fathers, mothers, etc., § 1655a..	116
executors and administrators to deduct tax, § 1655a.....	117
executors and administrators to give clerk of court list of heirs, § 1655a..	118
executors and administrators, duties of in relation to, § 1655.....	115
imposition of tax, § 1655a.....	114
land subject to inheritance tax, § 1655a.... ..	115
lien, inception and continuation of, § 1655a..	114
paid to state treasurer, § 1655.....	117
property subject to inheritance tax, § 1655a	115

REVENUE AND TAXATION—Continued.

rate of tax, § 1655a.....	114
real estate, appraisalment for—payment of, § 1655.....	115
rule for valuation, inheritance tax. § 1655a.... ..	115

Levy of Taxes:

accounts of counties to be closed by state auditor, when § 1717.....	129
basis of levy, amount of assessment as equalized, § 1717.....	129
county "indebtedness" defined, § 1718.....	129
delinquent state tax, when credited to county, § 1717.....	129
delinquent state tax to be certified to county auditor and included in current tax, § 1717.....	128
time and rate of levy, § 1719.....	129

Listing and Valuation:

bank stock, § 1677.....	124
bank stock of nonresidents. § 1677..	124
county in which listed, § 1657.....	120
decedents' property, where listed, § 1664.....	123
deductions, capital stock, § 1671.....	123
equalization, conclusive when, § 1714..	127
city taxes, equalization of, § 1786..	147
notice of to property owners, § 1714..	127
state board of, duties of, § 1716...	127
exemptions, from taxation, § 1659....	120
conditions precedent to, § 1659a....	122
corporate stock, § 1677.....	124
school and college property, § 1659a	121
unconstitutional provision, § 1659..	121
excessive levy, powers of commissioners, § 1718.....	129
migratory stock, provision respecting, held constitutional, § 1662.....	123
"personal property" defined, § 1657..	119
personal property, where listed, § 1665..	123
powers of assessors after list returned, § 1710.....	126
property subject to taxation, § 1655..	119
realty defined, § 1656.....	119
how listed, § 1699.....	125
irregular subdivisions, how listed, § 1699a.... ..	126
irregular tracts, survey of, § 1699..	126
listing by assessor, § 1699.....	126
remission of penalty and interest, § 1659.....	121
remission of unpaid taxes of charitable institutions and penalties, § 1659b..	122
removal of property from county, § 1661..	122
state board of equalization, who comprise, § 1716.....	127
duties of, § 1716.....	128
transcript of conclusions to counties, § 1717.....	128
state land under contract, § 1682....	124
taxes a fixed charge when, § 1655....	119
transient vendors of merchandise, § 1740a.... ..	134
valuation, arbitrary, § 1699.....	126
valuation to be true value, § 1698....	124
vessels, foreign register, § 1666.....	123

REVENUE AND TAXATION—Continued.

Redemption:

- by minors and insane, § 1755..... 138
- by part owner, § 1753..... 137
- how made, § 1755..... 138
- interest, fifteen per cent valid, § 1755. 138
- to whose benefit inures, § 1755..... 138
- when made, § 1755..... 138

Review, Writ of—See SPECIAL PROCEEDINGS (certiorari).

Revivor of Judgments—See ISSUES, TRIAL AND JUDGMENT.

RIGHTS OF PROPERTY.

Assignment and Satisfaction of Mortgages:

- assignment of, § 4565..... 529
- mortgage of land by administrator, satisfaction by mortgagor, § 4563..... 529
- satisfaction of mortgage on records, § 4563..... 528

Chattel Mortgages:

- affidavit of good faith, § 4558..... 526
- affidavit of renewal, effect of filing, § 4559a..... 527
- affidavit of renewal, form of, § 4559a. 528
- crops before planting cannot be, § 4559a..... 527
- discharge of record, how made, § 4559a..... 528
- failure to record, effect of, § 4559.... 526
- mortgaged property in two or more counties, record of, § 4559a..... 528
- recording, effect of—renewal by affidavit, § 4559a..... 527
- recording, time of, record of, § 4559a. 527
- recorded as real estate mortgage—effect of, § 4558..... 526
- right of possession of property mortgaged, § 4558..... 526
- validity of, who is creditor of mortgagor, § 4558..... 526

Deeds and Other Instrument Affecting Lands:

- acknowledgments, certificate of—failure to state notary's residence, § 4533 524
- acknowledgment, certificate of—form, § 4533a 524
- acknowledgments in foreign country by whom may be taken, § 4530.... 524
- acknowledgments in other states—certificate of, § 4528..... 523
- community property, bona fide purchaser of, § 4544..... 526
- community property—failure of spouse to file notice of claim—bona fide purchaser, § 4545..... 526
- contract to sell land not a conveyance, § 4517..... 523
- deeds—insufficient description, § 4518. 523
- Indians, permitting to convey lands, § 4553.. 526
- mortgages of mixed property—recording and effect of, § 4535a..... 525
- notice of unrecorded deed, § 4535.... 525
- power of attorney—husband and wife, § 4540..... 526
- record, effect of, § 4535..... 525

RIGHTS OF PROPERTY—Continued.

- recording law—bona fide purchaser, § 4535..... 524
- recording law—record governs as to interest, § 4535..... 525
- recording laws—unrecorded deed has priority over title of judgment creditor, § 4535..... 525
- record of conveyance—priorities—parol proof admissible to establish, § 4535 524
- Descents and Distribution of Estates:
 - community property, descent of, § 4621.. 532
 - right of surviving spouse, community property, heirs of community, § 4621.. 532
 - illegitimate children, right of inheritance, § 4624.... 532
 - title vests without administration where no debts exist, § 4640..... 532

Frauds and Perjuries:

- agreement within statute, § 4575.... 529
- conditional sale—failure to file—purchase by creditor for debt, § 4585.. 530
- conditional sales of personalty, § 4585. 530
- conditional sales record index, § 4586. 531
- conveyances between husband and wife, burden of proof as to good faith, § 4580.... 530
- fraudulent transfer, who is creditor, § 4575.. 529
- lease, parol agreement for, § 4575.... 529
- promise to pay debt of another, § 4576. 529

Leases:

- from month to month, § 4569..... 529
- notice to quit, § 4569..... 529
- record of assignment leases, validity of, § 4568... 529
- term longer than year, § 4568..... 529

Wills:

- construction of wills, § 4614..... 531
- devise of land, how construed, § 4608 531
- void when children not provided for, § 601..... 531

Road Supervisor — See HIGHWAYS (bridges, funds and labor).

Roads—See HIGHWAYS.

Robbery—See CRIMES AND PUNISHMENTS (offenses against property).

SALARIES OF COUNTY OFFICERS—FEES AND COSTS.

- auditors of counties, § 1609..... 110
- classification of counties for, § 1563... 104
- salaries of eighteenth class, § 1582.... 106
- clerks of superior courts, § 1609..... 107
- clerk of superior court, probate jurisdiction, § 1609..... 113
- clerk of supreme court, § 1609..... 106
- constables' fees, § 1609..... 110
- coroners' fees, § 1609..... 111
- jurors' fees, § 1609..... 111
- jurors' fees, interpretation of court, § 1609... 113
- justices' salaries, payment of, § 1646.. 114
- notaries' public fees, § 1609..... 112

**SALARIES OF COUNTY OFFICERS—
FEES AND COSTS—Continued.**

Secretary of State's fees, § 1609.....	112
sheriffs' fees, § 1609.....	109
Surveyors' compensation, interpreta- tion by court, § 1564.....	106
witnesses' fees, § 1609.....	111
witnesses' fees to public officers, when allowed, § 1626.....	113
witnesses' fees to public officers, when not allowed, § 1626a.....	113
witnesses, mileage, § 1609.....	114

**Sale of Cigarettes—See POLICE AND
SANITARY REGULATIONS.**

**Sales on Execution and Decree—See EN-
FORCEMENT OF JUDGMENTS.**

**Sales and Mortgages of Estates—See PRO-
BATE LAW AND PROCEDURE.**

Sales of Stocks of Merchandise—See ~~POLICE AND SANITARY REGULATIONS.~~

**Samish Lake Hatchery—See FISHERIES
(hatcheries).**

**Satisfaction of Mortgages—See RIGHTS
OF PROPERTY.**

**School Books—See EDUCATION (text-
books).**

**School District Bonds—See EDUCATION
(district schools).**

School District—See EDUCATION.

**School for Defective Youth—See EDUCA-
TION.**

**School Funds—EDUCATION (officers, pow-
ers, and school revenues).**

**School and Granted Lands—See STATE
LANDS.**

School Lands—See STATE LANDS.

School Revenue See EDUCATION.

Schools, Public—See EDUCATION.

Seattle Armory—See MILITIA.

**Second and Third Convictions—See
CRIMES AND PUNISHMENTS (offenses
not specially provided for).**

**Secretary of State—See EXECUTIVE DE-
PARTMENT.**

**Seduction—See CRIMES AND PUNISH-
MENTS (offenses against the person).**

Senatorial Districts—See LEGISLATIVE.

Sheep—See DOMESTIC ANIMALS.

**Sheriff—See COUNTY GOVERNMENT;
SALARIES OF COUNTY OFFICERS.**

SHIPPING.

pilots, violations of law governing, § 3242	360
--	-----

Sites for Schoolhouses—See EDUCATION.

**Skagit River—See FISHERIES (hatch-
eries).**

**Skokomish River—See FISHERIES (hatch-
eries).**

**Skookum Bay—See FISHERIES (hatch-
eries).**

**Slander—See CIVIL PROCEDURE (gen-
eral rules of pleading).**

**Snohomish River—See FISHERIES (hatch-
eries).**

**Sodomy—See CRIMES AND PUNISH-
MENTS (offenses not specially provided for).**

**Soldiers' Home — See BENEVOLENT,
REFORMATORY AND PENAL INSTITU-
TIONS.**

**Special Assessments—See CITIES AND
TOWNS; CITIES OF FIRST CLASS;
CITIES OF THIRD CLASS; DRAINAGE
DISTRICTS (omitted lands; payment of war-
rants under act of 1895); IMPROVEMENT
OF NAVIGABLE RIVER.**

SPECIAL PLEADINGS.

Assignments for Benefit of Creditors: expenses of assignment and administra- tion of assets, § 5841.....	622
pledge of property to specific creditors not an assignment, § 5841.....	622
possession of assets by assignee custody of court, § 5841.....	622
property assigned in control of court, § 5843	622

Certiorari: amount in controversy by supreme court, § 5741.....	613
contents of writ, § 5744.....	614
eminent domain cases, § 5741.....	613
jurisdiction. facts necessary to give, § 5741	612
jurisdiction of superior courts in, § 5741	612
jurisdiction of superior courts limited by right of appeal, § 5741.....	613
jurisdiction to review action of board of equalization, writ, § 5741.....	613
jurisdiction to review proceedings of county superintendent, § 5741.....	613
jurisdiction where appeal not adequate remedy, § 5741.....	613
notice of application for writ, § 5742..	614
office of—want of jurisdiction in lower tribunal, § 5741.....	613
procedure in, § 5742.....	614
quashing writ, grounds for, § 5742.....	614
questions to be reviewed by writ, § 5741	612
supreme court has jurisdiction where appeal not available remedy, § 5741..	614
supreme court, jurisdiction where no appeal, § 5741.....	613

Contempts: arrest for, without bail fixed or return day, § 5801	621
constructive contempt, affidavit in, § 5801	621
imprisonment in contempt proceedings, § 5808	621
newspaper publication, § 5798.....	620

SPECIAL PLEADINGS—Continued.

- receiverships, refusal to surrender property in, § 5798..... 621
- refusal to pay alimony, § 5798..... 621
- supplemental proceedings, § 5798..... 621
- Habeas Corpus:**
 - admitting to bail, § 5828..... 622
 - contempt in divorce proceedings, § 5826 621
 - extradition, § 5828..... 622
 - legality of judgment, inquiry into, § 5826 622
 - process on final judgment, § 5826..... 622
- Mandamus:**
 - application for writ, showing for, § 5756 618
 - assessments, acceptance of payment of, § 5755 616
 - assessments, making by county commissioners, § 5755..... 615
 - auditing accounts by county commissioners, § 5755..... 615
 - certification of pay-roll of public officers, § 5755 615
 - confirmation of sale by superior court, § 5755 617
 - contest of will by state, § 5755..... 617
 - costs against real party in interest, § 5760 618
 - damages in mandamus proceedings, § 5765 618
 - defense to issue of writ, § 5755..... 614
 - exercise of judicial functions, § 5755 615, 616
 - funding bonds, issue of, § 5755..... 616
 - issues of fact, trial, § 5760..... 618
 - issue of warrants, special fund, § 5755. 616
 - levy of tax by city to pay judgment, § 5755 616
 - operation of railway, § 5755..... 616
 - parties—defendant, § 5755..... 614
 - parties—relator, § 5755..... 614
 - payment of city warrants, § 5755... 615, 616
 - payment of warrants, § 5755..... 615
 - payment of warrants by city, § 5755... 617
 - proper remedy, when, § 5755..... 615
 - restoration to office, § 5755..... 617
 - redocketing case after dismissal, § 5755 617
 - return of execution by sheriff, § 5755.. 617
 - sale of tide lots, § 5755..... 617
 - superior court, jurisdiction by, § 5755.. 617
 - supersedeas bond on appeal, § 5755.... 616
 - supreme court, limit of jurisdiction by amount in controversy, § 5755..... 616
 - supreme court, no jurisdiction when appeal allowed, § 5755..... 616
 - title to office, § 5755..... 615
 - title to office in controversy, § 5755... 617
 - warrants for salary of public officer, § 5755 615
 - warrants, issue by state auditor, § 5755 617
- Prohibition:**
 - affidavit for, by whom made, § 5770... 618
 - board of education, trial of school officers, § 5770..... 619
 - not proper remedy, when certiorari available, § 5770..... 619

SPECIAL PLEADINGS—Continued.

- not proper remedy where appeal lies, § 5770 619
- reviewing action of superior court, § 5770 619
- supreme court, jurisdiction limited to judicial powers, § 5769..... 618
- supreme court, to prohibit superior court from proceeding without jurisdiction, § 5769..... 618
- taxation—change of assessment by county treasurer, § 5770..... 619
- Quo Warranto:**
 - information for, by whom filed, § 5780. 620
 - offices of private corporations, § 5780.. 620
 - public franchise—private corporations, § 5780 620
- Spokane Armory—See MILITIA.**
- Spraying Compounds, Sale of—See POLICE AND SANITARY REGULATIONS.**
- State Board of Accountancy See EXECUTIVE DEPARTMENT.**
- State Board of Health—See POLICE AND SANITARY REGULATIONS.**
- State Board of Equalization—See REVENUE AND TAXATION.**
- STATE CAPITOL BUILDING—AUTHORITY TO PURCHASE.**
 - act providing for, held to be an appropriation act, § 2253a..... 209
 - additional ground for, authority to purchase, § 2253a..... 208
 - architect for additions, § 2253a..... 208
 - appropriation for, § 2253a..... 209
 - bonds of Thurston county in payment, § 2253a..... 208
 - conditions upon which purchase authorized, § 2253a..... 208
 - courthouse and grounds of Thurston county, purchase of, § 2253a..... 207
 - interest, payment guaranteed by state, § 2253a..... 209
- State Fair—See AGRICULTURE.**
- State Fire Marshal—See POLICE AND SANITARY REGULATIONS.**
- State Fish Commissioner—See FISHERIES.**
- State Food Commission—See POLICE AND SANITARY REGULATIONS.**
- State Historical Society—See EXECUTIVE DEPARTMENT.**
- STATE LANDS.**
 - Appraisement—Sale:**
 - applications for, § 2141..... 177
 - appeal bond, § 2142a..... 180
 - appeal by applicants from decision of commissioner, § 2142a..... 179
 - appeal, hearing on, § 2142a..... 180
 - appeal, how taken, § 2142a..... 179
 - appeal to supreme court, § 2142a..... 180
 - appeal, transcript on, § 2142a..... 180
 - appraisement of improvements, § 2142. 178

STATE LANDS—Continued.

certificate of appraisement to be filed, § 2143	181
division of contract, conditions, § 2145	182
funds from sale, how disposed of, § 2142	179
judgment of superior court certified, § 2142a	180
limitation on price of, § 2141.....	178
notice of appraisement, § 2143.....	181
platting for, in and near cities, § 2141.	178
public sale of certain lands authorized, § 2144.....	181
quantity limited to one hundred and sixty acres, § 2141.....	178
repeal of conflicting laws, § 2142a.....	181
reservations of certain lands, § 2144...	182
rules of construction, § 2142a.....	181
sale of school land, confirmation of by commissioner, § 2145.....	182
sale of timber, stone, etc., on, § 2142...	178
tide lands, confirmation of sale, § 2145.	183
Classification—Management—Disposition:	
college regents, duties, respecting, § 2140a	176
commissioner, duties of, § 2140a.....	175
commissioner, report to regents of agri- cultural college, § 2140a.....	175
state treasurer to report to regents of agricultural college, § 2140a.....	176
Arid Lands:	
accepting grants of, from government, § 2085.....	167
applications for settlement, § 2085....	170
commissioner of lands, § 2086.....	175
contracts for ditch or irrigation work, § 2085.....	168
contracts for irrigation works, § 2085..	169
disposal of, § 2085.....	167
distribution of proceeds of sale of, § 2085.....	173
duties of contractors and settlers, § 2085	171
duty of land commissioner, § 2085....	168
fees for administration of act, § 2085..	174
foreclosure of lien for, § 2085.....	172
forfeiture of contracts for, § 2085....	169
funds from sale of, § 2085.....	171
funds from sale of lands, disposal of, § 2085	174
notice of opening land for settlement, § 2085	170
patents for, when issued, § 2085.....	171
records to be kept, § 2085.....	173
redemption from sale for, § 2085.....	173
repeal of conflicting laws, § 2085.....	174
reports of commissioner, § 2085.....	174
requests for selection, and proposals for ditches, § 2085.....	167
rules to govern proposals and entries, § 2085	173
suits by commissioner under act, § 2085	174
water rights, appurtenant to and lien on land, § 2085	172
water rights under, extended to other state lands, § 2085.....	174
Commissioners, Powers of:	
assistant land commissioner, § 2204b..	198

STATE LANDS—Continued.

commissioner, fees of, § 2192.....	197
commissioners, investment of school funds by, § 2200.....	197
disposition of, preferences, § 2204c....	199
petition for vacation, § 2204c.....	198
plats of vacation to be filed, § 2204c...	199
record of vacation, § 2204c.....	198
relinquishment of state land to United States. § 2204a.....	197
state land commissioners—power and authority of board, § 2211.....	199
tide land funds, investment of, § 2202.	197
vacation of plats of public lands, § 2204c.....	198
Leasing Gas and Petroleum Lands:	
authority of state land commissioner to lease, § 2212a.....	202
applications to lease, § 2212a.....	202
development by lessee, § 2212a.....	203
leases of, § 2212a.....	202
limitations on rentals, § 2212a.....	202
preferred right to lease, § 2212a.....	203
products of, to be kept separate, § 2212a.....	202
reports, § 2212a.....	202
rights of agricultural lessees of, § 2212a.....	203
who may lease, § 2212a.....	202
Leasing Mineral Lands:	
change of boundaries of leasehold, § 2213.....	204
conditions of contract of lease, § 2218	205
contracts of lease, form of, § 2217....	204
discoverer of minerals, right of, to lease, § 2213.....	203
rentals of, § 2216.....	204
Leasing Oyster Lands:	
abandonment of leased premises, sub- stitution of lands, § 2243a.....	207
applications for lease, § 2243a.....	206
description of lands in applications, duties of fish commissioner, § 2243a.	207
descriptions of land in applications to lease, § 2243a.....	206
lease of, § 2243a.....	205
limitations of area leased to one lessee, § 2243a.....	206
limitations of provisions of act, § 2243a.....	207
preferences of lessees, § 2243a.....	205
reversions of lands to state, § 2243a.	207
survey and record of land applied for, § 2243a.....	207
term of leases—rentals, § 2243a.....	206
Leasing School and Granted Lands:	
application and deposit for lease, § 2149.....	183
assignments of lease and contract valid- ity of, rights under, § 2161.....	185
cutting timber by lessee or purchaser, not trespass, § 2168.....	185
lease by county auditor, report of, § 2153.....	183
lease of tide lands—waiver of priority, § 2153.....	183

STATE LANDS—Continued.

lease, prior right of lessee, § 2160....	184
lease, removal of improvements by lessee, § 2161.....	184
payments, extension of time for, § 2158.....	184
penalty for violation of act, § 2168..	185
"public lands" defined, § 2157.....	184
trespass, penalty for, § 2168.....	185
Rights in Ceded to United States:	
Rainier National Park, jurisdiction over ceded to United States, § 2110.....	175
Tide and Shore Lands:	
Aberdeen tide and shore land—appraisal of, § 2211.....	199
basis of reappraisal of, § 2211a.	200
notice of filing plats, § 2211a.....	201
notice of platting and appraising, § 2211.....	199
preference to abutting owners, § 2211	200
preference to abutting owners, § 2211a	201
reappraisal, § 2211a	200
three thousand dollars appropriated to defray expense of reappraisal, § 2211a	200
Aberdeen harbor lines—re-establishment of, § 2211a	200
Blaine tide lands, prior purchasers, § 2171b	188
reappraisal, § 2171b	188
First Class:	
abutting owners to lease, § 2175a....	191
abutting owners and tenants of, § 2175	191
abutting owner's prior right to purchase, § 2175	191
accretions to, appeals respecting, § 2181	194
accretions to, how sold, § 2181.....	195
appeals from commissioners' decision on applications to buy—extent of right, § 2182	194
duty of attorney general in § 2182a	195
hearing on appeal, § 2182	194
notice of appeal, § 2182	194
parties to appeal, § 2182	194
penalty for failure to prosecute, § 2182a	194
reappraisal and sale on dismissal of appeal, § 2182a	195
record on appeal, § 2182.....	194
applications to purchase—amendments of, § 2175	191
appraisal of, § 2170	186
belong to state, § 2181.....	193
boundaries—estoppel by conduct, § 2175	191
classification of, § 2169	18
contests between applicants to purchase, § 2175	19
harbor lines to be established, § 2170.	186
replat, approved by county commissioners, § 2170	187
replat of, on petition, § 2170	186
replat to be approved by city council, when, § 2170	186

STATE LANDS—Continued.

streets and alleys over, control of cities wherein located, § 2170a	187
streets and alleys, other public places, when vacated vest in abutters, § 2170	186
survey of, § 2170	186
waterways laid out prior to January 1900, not to be vacated, § 2170.....	186
Harbor Areas:	
bond of lessee, § 2183.....	195
examination of sureties on lessee's bond, § 2183	196
failure to exercise priority, notice to lease, § 2183	196
leases of, § 2183	195
lessee may improve at his option, § 2183	196
lessee's prior right to readjustment of rent, § 2183	196
proceeds of sale appropriated to harbor improvements, § 2187	197
powers of commission construed, § 2183	197
rentals from, § 2183	195
rentals to constitute harbor fund, § 2183	196
one thousand dollars, given commissioner to expend in investigations, § 2183	196
Hoquiam harbor lines—re-establishment of § 2171d	188
Hoquiam tide lands—notice, platting and reappraisal, § 2171d.....	190
Hoquiam tide lands, preference to abutters, § 2171d	189
Hoquiam tide land—reappraisal of § 2171d	189
Hoquiam tide lands, report of reappraisements to be filed with commissioner, § 2171d	189
La Conner tide land—reappraisal of, § 2171a	187
prior purchasers of La Conner tide land, § 2171a	187
New Whatcom tide lands—reappraisal, § 2171e.....	190
reappraisal of tide lands construed, § 2171e	190
reappraisal—rights of purchasers prior to, § 2171e.....	190
report of reappraisal to be filed with auditor, § 2171e.....	190
rights of prior purchasers, § 2171e..	190
regulation of tolls reserved to state, § 2183.....	195
Second Class, Improvements on, § 2178	192
limitation of price, § 2178.....	192
pending applications to purchase, § 2178a	192
preference in sale of, § 2178a....	192
reappraisal and platting, § 2178	192
reappraisal, notice to abutting owner, § 2178a	193
sale of, § 2178	192
sale without application, notice, and preference, § 2178a	192

STATE LANDS—Continued.

- separated from upland sale of, § 2179..... 193
- Tide and Shore lands leased as other lands, § 2180 193
- sold as other lands, § 2181 193
- Vancouver tide land—preference to abutting owner, § 2171c..... 188
- reappraisement of, § 2171c..... 188
- State Land Commissioner—See STATE LANDS.**
- State Geological Survey—See MINES AND MINING.**
- State Library—See EDUCATION** (state library commission).
- State Library Commission—See EDUCATION.**
- State Museum—See EDUCATION** (state university).
- State Normal Schools—See EDUCATION.**
- State Officers—See EXECUTIVE DEPARTMENT.**
- State Roads—See HIGHWAYS** (Marble Mount State Road).
- State Superintendent of Public Instruction—See EDUCATION.**
- State Treasurer—See REVENUE AND TAXATION** (inheritance tax).
- State University—See EDUCATION.**
- Statement of Facts—See ISSUES, TRIAL AND JUDGMENT** (exceptions).
- STATUTES.**
 - Ballinger's compilation of, adopted as official..... 5
 - Statute of Frauds—See RIGHTS OF PROPERTY** (frauds and perjuries).
 - Statute of Limitations—See CIVIL PROCEDURE** (commencing actions).
 - Stock—Corporate—See PRIVATE CORPORATIONS** (mining companies; organization and management, trust companies).
 - Street Railway—See EMINENT DOMAIN.**
 - Suffrage, Bribing Voter, etc.—See CRIMES AND PUNISHMENTS.**
 - Sugar Bounty—See AGRICULTURE.**
 - Summons—See CIVIL PROCEDURE** (commencing actions).
 - Sunday—See CRIMES AND PUNISHMENTS** (offenses against public morals and decency).
 - Supersedeas—See APPEALS TO SUPREME COURT** (supersedeas bond).
 - Superior Court—See COURTS.**
 - Supplemental Proceedings—See ENFORCEMENT OF JUDGMENTS.**
 - Supreme Court—See COURTS.**

- Surety Companies—See OFFICERS** (official bonds).
- Swine—See DOMESTIC ANIMALS.**
- Tacoma Armory—See MILITIA.**
- Taxes—See REVENUE.**
- Teachers—See EDUCATION.**
- Teachers' Certificates—See EDUCATION.**
- Teachers' Institutes.—See EDUCATION.**
- Telegraph and Telephone Companies—See PRIVATE CORPORATIONS.**
- Text-books—See EDUCATION.**
- Thistles—See AGRICULTURE** (Canada thistles).
- Thurston County—See JUDICIAL DEPARTMENT** (superior courts).
- Tide Lands—See STATE LANDS.**
- Tolls—See PRIVATE CORPORATIONS** (boom companies).
- TRADE AND COMMERCE.**
 - Bills of Lading:**
 - Bills of lading, negotiable, § 3598.... 413
 - negotiation—effect, § 3600..... 413
 - Warehouse Receipts:**
 - contracts respecting not controlled, definition of, § 3590..... 413
 - duty of warehousemen, § 3596..... 413
 - negotiation by indorsement, § 3599... 413
 - Trespass—See WASTE, TRESPASS AND NUISANCE.**
 - Trial—See ISSUES, TRIAL AND JUDGMENT.**
 - Trout—See POLICE AND SANITARY REGULATIONS** (game fish).
 - Truant Schools—See EDUCATION.**
 - Trust Companies—See PRIVATE CORPORATIONS.**
 - United States—See STATE LANDS** (Rainier National Park ceded to).
 - Unlawful Assembly—See CRIMES AND PUNISHMENTS** (offenses against the peace).
 - Usury—Page 439.**
 - Vacation and Modification of Judgments—See ISSUES, TRIALS AND JUDGMENT.**
 - Validating Indebtedness—See CITIES OF FIRST CLASS** (additional powers given, etc.); **DRAINAGE DISTRICTS**, (organization; payment of warrants, etc.); **FINANCE.**
 - Variance—See CIVIL PROCEDURE** (amendment of pleadings); **CRIMINAL PROCEDURE.**
 - Venue of Actions—See CIVIL PROCEDURE; DIVORCE AND ALIMONY; JUSTICES' COURTS, PROCEDURE IN.**
 - Verdict—See ISSUES, TRIALS AND JUDGMENT.**

Veteran Soldiers—See BENEVOLENT, REFORMATORY AND PENAL INSTITUTIONS (indigent soldier, burial of).

Veterinary Surgeon, State—See POLICE AND SANITARY REGULATIONS.

Viewers—See HIGHWAYS (laying out and opening).

Vivisection and Dissection—See EDUCATION (penalties).

Votes and Voting—See ELECTIONS.

Wages—See EMPLOYEES, PROTECTION OF; LIENS AND ENFORCEMENT OF LIENS (employees, laborers on logs and timber, mechanics and materialmen).

Warehouse Receipts—See TRADE AND COMMERCE).

Warden of Penitentiary—See BENEVOLENT, REFORMATORY AND PENAL INSTITUTIONS (penitentiary).

Warrant—See CRIMINAL PROCEDURE IN COURTS OF RECORD.

Warrants, State and Municipal—See EDUCATION (school revenues); DRAINAGE DISTRICTS (payment, etc.); CITIES AND TOWNS (enforcement of assessment, etc.); DRAINAGE DISTRICTS.

WASTE TRESPASS AND NUISANCE.

- treble damages, intent to trespass necessary element to recovery of, § 5656..... 609
- treble damage—not allowed in conversion, § 5656..... 608
- treble damage, mistake a defense to, § 5656 608

WATER RIGHTS.

- Appropriation of Water for Irrigation:
 - artesian wells, § 4117a..... 488
 - adjacent proprietors, rights of, § 4117d..... 489
 - flow restricted, duty of owner, § 4117b..... 488
 - penalties, § 4117c..... 489
 - commissioner of irrigation, salary of, § 4125..... 489
 - county to be irrigation district, § 4125 489
 - decrees affecting, enforcement of, § 4165b..... 490
 - measuring boxes—gates—repairs, § 4165a... 489
 - right of way for ditches, canals and flumes, appropriation of land for, § 4165c..... 490
 - complaint, summons and judgment, § 4165c 491

WATER RIGHTS—Continued.

- condemnation, proceedings, § 4165c. 491
- definition of terms, § 4165c..... 492
- extent of right of way, § 4165c..... 491
- nonriparian owners, rights of, § 4165c 490
- riparian owners, rights of, § 4165c.. 490
- rule for construing act, § 4165c.... 492
- value of land taken, etc., how determined, § 4165c..... 491

Irrigation Districts:

- act providing for, held not to deprive persons of property without legal process, § 4166... 492
- board of directors, powers of, § 4176.. 492
- dissolution of districts, § 4245a..... 492
- auditor's duty respecting, § 4248b.. 493
- consent of bondholders, § 4245b.... 492
- court proceedings in, § 4248c..... 493
- election for, § 4246a..... 492
- judgment of dissolution, § 4248h... 495
- officers to conduct election, § 4246b. 493
- petition for dissolution, § 4245c..... 492
- records of district, filing, § 4248a... 493
- returns of election, § 4248a..... 493
- sale of property, § 4248e..... 493
- sale, confirmation of, § 4248f..... 494
- sale, report of, § 4248f..... 494
- tax levy to pay debts other than bonds, § 4248g..... 494
- validity of claims, determination of.
 - appeal, § 4248d..... 493

Washington Volunteers—See BENEVOLENT, REFORMATORY AND PENAL INSTITUTIONS.

Waterworks—See CITIES AND TOWNS.

Ways of Necessity—See HIGHWAYS (private ways of necessity for logging).

Wenatchee River Hatchery—See FISHERIES (hatcheries).

Wharves—See HARBORS AND WHARVES.

Whitman Mission—See BENEVOLENT, REFORMATORY AND PENAL INSTITUTIONS.

Wife—See DOMESTIC RELATIONS (husband and wife); RIGHTS OF PROPERTY (deeds, etc.); EVIDENCE (competency of witnesses).

Wife's Prostitution. Conniving at—See CRIMES AND PUNISHMENTS (public morals, etc.)

Wills—See PROBATE LAW AND PROCEDURE; RIGHTS OF PROPERTY.

Witness—See CRIMINAL PROCEDURE; EVIDENCE (competency of depositions).